



Registration of a Charge

Company name: **OCTOPUS HEALTHCARE PROPERTY LTD**

Company number: **05258667**



X85OLY2P

Received for Electronic Filing: **17/05/2019**

Details of Charge

Date of creation: **17/05/2019**

Charge code: **0525 8667 0003**

Persons entitled: **INVESTEC BANK PLC**

Brief description: **NOT APPLICABLE**

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 THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **EMILY FULLER**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 5258667

Charge code: 0525 8667 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th May 2019 and created by OCTOPUS HEALTHCARE PROPERTY LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th May 2019 .

Given at Companies House, Cardiff on 20th May 2019

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

Share Charge

OCTOPUS HEALTHCARE PROPERTY LIMITED

the Chargor

and

INVESTEC BANK PLC

as Security Agent

17 May **2019**

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THIS DEED is made on 17 May 2019

BETWEEN:

- (1) **OCTOPUS HEALTHCARE PROPERTY LIMITED** (a company incorporated in England and Wales with registered number 05258667) (the "**Chargor**"); and
- (2) **INVESTEC BANK PLC** as security trustee for itself and the other Secured Parties (the "**Security Agent**", which expression shall include any person from time to time appointed as a successor, replacement or additional trustee in relation to the interests created by this deed).

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed:

"**Charged Property**" means the assets mortgaged, charged or assigned in favour of the Security Agent by this deed;

"**Default Basis**" means the rate at which interest is payable and the basis for determining payments due, as provided for in **clause 8.4 (Default Interest)** of the Facility Agreement;

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent;

"**Distribution Rights**" means all dividends, distributions, interest and/or other income paid or payable on any Subsidiary Share, together with all shares or other property derived from that Subsidiary Share and all other allotments, accretions, rights, benefits and advantages of all kinds accruing, offered or otherwise derived from or incidental to that Subsidiary Share (whether by way of conversion, redemption, bonus, preference, option or otherwise);

"**Event of Default**" means an Event of Default under the Facility Agreement;

"**Facility Agreement**" means the single currency revolving facility agreement made between the, amongst others, (i) Octopus Capital Finco Limited (in its capacity as borrower) (the "**Borrower**"), (ii) Investec Bank plc (in capacity as arranger) (the "**Arranger**"), (iii) Investec Bank plc (in capacity as agent) (the "**Agent**"), (iv) the Security Agent, and (v) Investec Bank plc (in capacity as original lender) (the "**Lender**"), dated on or about the date of this deed;

"**Finance Documents**" means the Finance Documents as defined in the Facility Agreement;

"**Finance Party**" means the Agent, the Arranger, the Security Agent, the Hedge Counterparty, any Ancillary Lender or a Lender;

"**Insolvency**" means:

- (a) that the Chargor:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) suspends making payments on any of its debts; or
 - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

- (b) The value of its assets is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any of its indebtedness.

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the legal opinions.

"Limitation Acts" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984;

"Obligors" means the Obligors as defined in the Facility Agreement;

"Obligors' Agent" means the Obligors' Agent under the Facility Agreement;

"Perfection Requirements" means any and all registrations, filings, endorsements, acceptances, acknowledgements, and stampings in accordance with local laws, notations in stock registries, notarisations, legalisation, notices and other actions and steps required to be made in any Relevant Jurisdiction in order to perfect the Security created or purported to be created pursuant to the Security Documents or in order to achieve the relevant priority for such Security.

"Receiver" means a receiver or receiver and manager in each case appointed under this deed;

"Related Rights" means, in relation to any asset:

- (a) the proceeds of sale of that asset or any part of that asset;
- (b) any monies and proceeds paid or payable in relation to that asset; and
- (c) the benefit of all other rights, powers, claims, consents, contracts, warranties, security, guarantees, indemnities or covenants for title in respect of that asset,

including the Distribution Rights;

"Secured Obligations" means all obligations at any time due, owing or incurred by the Obligors and the Chargor to any Secured Party under the Finance Documents (including any liabilities of any Obligor under a Secured Hedging Agreement), whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or surety or in some other capacity);

"Secured Parties" means each Finance Party from time to time party to the Facility Agreement, any Receiver and any Delegate;

"Security Period" means the period beginning on the date of this Deed and ending on the date on which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full;

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"Subsidiary" means a subsidiary undertaking within the meaning of *section 1162 of the Companies Act 2006*; and

"Subsidiary Shares" means the shares or other securities listed in schedule 1 (*Subsidiary Shares*).

1.2 Construction

- (a) In this deed, unless a contrary intention appears, a reference to:
- (i) words and expressions defined in the Facility Agreement have the same meanings when used in this deed unless otherwise defined in this deed;
 - (ii) the **"Agent"**, the **"Arranger"**, the **"Chargor"**, any **"Finance Party"**, any **"Lender"**, any **"Secured Party"**, the **"Security Agent"**, any **"Obligor"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
 - (iii) **"assets"** includes present and future properties, revenues and rights of every description;
 - (iv) a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (v) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vi) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (vii) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law one with which it is customary to comply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (viii) a provision of law is a reference to that provision as amended or re-enacted;
 - (ix) a time of day is a reference to London time; and
 - (x) any clause or schedule is a reference to respectively, a clause of and schedule to this deed and any reference to this deed includes its schedules.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Default (other than an Event of Default) is **"continuing"** if it has not been remedied or waived and an Event of Default is **"continuing"** if it has not been waived.
- (d) The parties intend that this document shall take effect as a deed, notwithstanding the fact that a party may only execute it under hand.

1.3 **Third Party Rights**

- (a) Any Receiver or Delegate will have the right to enforce the provisions of this deed which are given in its favour however the consent of a Receiver or Delegate is not required for the rescission or variation of this deed.
- (b) Subject to paragraph (a), a person who is not a party to this deed has no right under the *Contracts (Rights of Third Parties) Act 1999* to enforce or enjoy the benefit of any term of this deed.

2. **COVENANT TO PAY**

Subject to paragraph 4 below, the Chargor as primary obligor covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it will on demand pay the Secured Obligations when they fall due for payment.

3. **CHARGING CLAUSE**

The Chargor, as security for the payment and discharge of the Secured Obligations, charges in favour of the Security Agent with full title guarantee all of its right, title and interest in the Subsidiary Shares and all Related Rights, by way of first fixed charge.

4. **LIMITED RECOURSE**

Notwithstanding the terms of any other provision of this Deed, the Security Agent shall have no recourse against the Chargor or its assets, whether by way of court proceedings, a winding up application or otherwise, in respect of its obligations and liabilities under this Deed except by enforcement of its security over the Charged Property, and the liability of the Chargor shall extend only to and shall not exceed the proceeds of any such enforcement and shall be satisfied only from the proceeds of sale or other disposal or realisation of the Charged Property pursuant to this deed.

5. **FURTHER ASSURANCE**

- (a) The Chargor shall promptly (and at its own expense) 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)):
 - (i) to perfect the Security created or intended to be created under or evidenced by this deed or for the exercise of any rights, powers and remedies of the Security Agent, any Receiver or the Secured Parties provided by or pursuant to this deed or by law; and/or
 - (ii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by this deed.
- (b) The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to this deed.

6. REPRESENTATIONS AND WARRANTIES

6.1 Matters Represented

The Chargor represents and warrants to the Security Agent as set out in this **clause 6** (*Representations and Warranties*) to the Security Agent on the date of this deed and on the date of each Utilisation Request and the first day of each Interest Period.

Each representation or warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

6.2 Status

- (a) It is a limited liability corporation, duly incorporated and validly existing under the laws of England and Wales.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

6.3 Binding obligations

Subject to the Legal Reservations and the Perfection Requirements:

- (a) the obligations expressed to be assumed by it in this deed are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of **paragraph (a)** above), the security interests created by this deed are valid and effective.

6.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this deed and the granting of the Security hereunder do not and will not conflict with:

- (a) subject to the Legal Reservations, any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument

6.5 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this deed and the transactions contemplated by this deed.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by this deed.

6.6 Validity and admissibility in evidence

- (a) Subject to the Legal Reservations, all Authorisations required:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this deed; and
 - (ii) to make this deed admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect except any Authorisation referred to in **clause 18.8** (*No filing or stamp taxes*) of the Facility Agreement, which Authorisations will be promptly obtained or effected after the date of this deed.

- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Chargor have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

6.7 **Governing law and enforcement**

Subject to the Legal Reservations, the choice of governing law and any judgment obtained in relation to this of this deed will be recognised and enforced in England and Wales.

6.8 **Insolvency**

No corporate action, legal proceeding or other procedure or step towards Insolvency has been taken or, to the knowledge of the Chargor, threatened in relation to the Chargor.

6.9 **No proceedings**

- (a) No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or in relation to the Subsidiary Shares and Related Rights.
- (b) No judgment or order of a court, arbitral body or agency which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it.

6.10 **Sanctions**

Neither it nor any of its respective directors or officers:

- (a) is a Restricted Person;
- (b) is engaging in any transaction or other activity, directly or indirectly, with a Restricted Person in any manner which would cause it to violate any Sanction applicable to it;
- (c) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to Sanctions for a Sanctions Authority;
- (d) has violated any Anti-Terrorism Laws in any material respect; or
- (e) has engaged in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of prohibited offences designated by the Organization of Economic Co-operation and Development's Financial Action Task Force on Money Laundering.

6.11 **Security**

No Security or Quasi-Security exists over all or any of Charged Property other than as permitted by this deed and the Facility Agreement.

6.12 **Ranking**

Subject to the Legal Reservations and Perfection Requirements, the security interest created by this deed has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security.

6.13 **Good title to assets**

It has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the Charged Property necessary to carry on its business as presently conducted.

6.14 **Legal and beneficial ownership**

- (a) It is the sole legal and beneficial owner of the Subsidiary Shares and the Subsidiary Shares are free from any claims, third party rights or competing interests.
- (b) All of the Subsidiary Shares are fully paid.

7. **UNDERTAKINGS - GENERAL**

7.1 **Duration of Undertakings**

All of the undertakings given in this deed are given from the date of this deed and until the end of the Security Period.

7.2 **Negative Pledge**

The Chargor will not create or agree to create or permit to subsist any Security or Quasi-Security over all or any part of the Charged Property except as created by this Deed or permitted by the Facility Agreement.

7.3 **Disposal Restrictions**

The Chargor will not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, transfer or otherwise dispose of all or any part of the Charged Property except as permitted by and in accordance with the Facility Agreement.

7.4 **Preservation of Charged Property**

- (a) The Chargor will observe and perform all covenants and stipulations from time to time affecting the Charged Property, make all payments, carry out all registrations or renewals and generally take all steps which are necessary to preserve, maintain and renew when necessary or desirable all the Charged Property.
- (b) The Chargor will not vary any contract, constitutional or other document relevant to its interest in any Charged Property where such variation would have a material adverse effect on the value of the relevant Charged Property or the rights of the Secured Parties.
- (c) The Chargor will enforce the due observance and performance of all covenants given for its benefit in relation to the Charged Property.

7.5 **Documents Relating to Charged Property**

- (a) Without prejudice to any specific requirements in this deed for the delivery of documents, the Chargor will promptly deliver to the Security Agent all documents of

title or evidence of ownership relating to the Charged Property which the Security Agent from time to time reasonably requires.

- (b) The Security Agent may retain any document delivered to it under this deed for the duration of the Security Period and, if for any reason it returns any document to the Chargor (or its nominee) before that time, it may by notice to the Chargor require that the relevant document be redelivered to it and the Chargor shall promptly comply (or procure compliance) with that notice.

8. **SUBSIDIARY SHARES**

8.1 **Voting and Distribution Rights**

- (a) Until the occurrence of an Event of Default which is continuing, the Chargor may:
 - (i) receive and retain all dividends, distributions and other monies paid on or derived from the Subsidiary Shares; and
 - (ii) exercise all voting and other rights and powers attaching to the Subsidiary Shares provided that it may not exercise any such voting or other rights or powers in a manner which is inconsistent with any Finance Document or which may be prejudicial to the value of the security given by this deed or the realisation of it.
- (b) On and after the occurrence of an Event of Default which is continuing:
 - (i) the Chargor will promptly pay all dividends, distributions and other monies paid on or derived from the Subsidiary Shares it receives to the Security Agent for distribution in accordance with **clause 15.1** (*Order of Application*); and
 - (ii) the Security Agent may (in its sole discretion) directly or indirectly (by instruction to the relevant legal owner of the relevant Subsidiary Shares) exercise, refrain from exercising or disclaim any right to exercise any voting or other rights and powers attaching to the Subsidiary Shares. Any exercise of such voting rights may only be for the purpose of preserving the value of the security given by this deed or facilitating the realisation of it. The Chargor will promptly comply with any direction given by the Security Agent in relation to the exercise of voting or other rights and powers. Any such disclaimer will confer on the Chargor the authority to direct the exercise of the disclaimed right, as if an Event of Default which is continuing had not occurred, in accordance with paragraph (a)(ii) above.
- (c) At any time when any Subsidiary Shares are registered in the name of the Security Agent or its nominee, the Security Agent will not be under any duty to ensure that any dividends, distributions or other monies due and payable in respect of those Subsidiary Shares are duly and promptly paid or received by it or its nominee, or to verify that the correct amounts are paid or received, or to take any action in connection with the taking up of any (or any offer of any) stocks, shares, rights, monies or other property paid, distributed, accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or otherwise on or in respect of or in substitution for, any of those Subsidiary Shares.

8.2 **Perfection of Subsidiary Shares Security**

The Chargor will promptly following the execution of this deed or (if later) acquisition of any Subsidiary Share deposit with the Security Agent (or as it shall direct) all stock and share certificates and other documents of title relating to the Subsidiary Shares in which it has an interest together with stock transfer forms executed in blank and left undated on the basis that the Security Agent shall be able to hold such documents of title and stock transfer forms until the Secured Obligations have been irrevocably and unconditionally discharged in full and shall

be entitled, at any time, following the occurrence of an Event of Default which is continuing, to complete, under its power of attorney given by **clause 8 (Attorney)** below, the stock transfer forms on behalf of the Chargor in favour of itself or its nominee(s).

9. **ATTORNEY**

(a) The Chargor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any person nominated for the purpose by the Security Agent or any Receiver (in writing and signed by an officer of the Security Agent or Receiver) as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed to execute, deliver and perfect any deed, agreement or other instrument and to do any act or thing:

- (i) which the Chargor is required to do by the terms of any Finance Document; and/or
- (ii) which is for the purpose of enabling the exercise of any rights or powers conferred on the Security Agent or any Receiver by any Finance Document or by law,

and the Chargor covenants with the Security Agent and the Receiver to ratify and confirm all such acts or things made, done or executed by that attorney.

(b) The power given under paragraph (a) may be exercised at any time after:

- (i) the expiry of five days following the failure by the Chargor to do that which it is required to do by the terms of any Finance Document; or
- (ii) an Event of Default has occurred, which is continuing.

10. **ENFORCEMENT**

10.1 **Exercise of Enforcement Powers**

At any time after an Event of Default has occurred and is continuing or notice demanding payment of any sum which is due but unpaid in respect of the Secured Obligations has been given by the Security Agent or any other Secured Party to the Chargor:

- (a) the security created by or pursuant to this deed is immediately enforceable;
- (b) the Security Agent may enforce all or any part of the security and take possession of and hold, sell or otherwise dispose and/or deal with all or any part of the Charged Property; and
- (c) the Security Agent may exercise the power of sale and all other rights and powers conferred by this deed or by statute (as varied or extended by this deed) on the Security Agent or on a Receiver, irrespective of whether the Security Agent has taken possession or appointed a Receiver of the Charged Property.

10.2 **Appointment of Receiver**

(a) Subject to paragraph (c) below, if:

- (i) An Event of Default has occurred and is continuing;
- (ii) notice demanding payment of any sum which is due but unpaid in respect of the Secured Obligations has been given by the Security Agent or any other Secured Party to the Chargor; or

(iii) so requested by the Chargor,

the Security Agent may by writing under hand appoint any person (or persons) to be a Receiver of all or any part of the Charged Property.

(b) *Section 109(1) of the Law of Property Act 1925* shall not apply to this deed.

(c) A Receiver may not be appointed solely by reason of the obtaining of a moratorium under *section 1A of the Insolvency Act 1986* in relation to the Chargor, or anything done with a view to obtaining such a moratorium.

10.3 **Appropriation**

(a) In this deed, "**financial collateral**" has the meaning given to that term in the *Financial Collateral Arrangements (No. 2) Regulations 2003*.

(b) If:

(i) an Event of Default has occurred and is continuing; or

(ii) notice demanding payment of any sum which is due but unpaid in respect of the Secured Obligations has been given by the Security Agent or any other Secured Party to the Chargor,

the Security Agent may appropriate all or part of the financial collateral in or towards satisfaction of the Secured Obligations.

(c) The Security Agent must attribute a value to the appropriated financial collateral in a commercially reasonable manner.

(d) Where the Security Agent exercises its rights of appropriation and the value of the financial collateral appropriated differs from the amount of the Secured Obligations, as the case may be, the Security Agent must account to the Chargor for the amount by which the value of the appropriated financial collateral exceeds the Secured Obligations.

11. **EXTENSION AND VARIATION OF STATUTORY POWERS**

11.1 **Statutory Powers**

The powers conferred on mortgagees, receivers or administrative receivers by statute shall apply to the security created by this deed (to the extent possible), unless they are expressly or impliedly excluded. If there is ambiguity or conflict between the powers conferred by statute and those contained in this deed, those contained in this deed shall prevail.

11.2 **Section 101 LPA Powers**

The power of sale and other powers conferred by *section 101 of the Law of Property Act 1925* shall arise on the date of this deed and for that purpose the Secured Obligations are deemed to have fallen due on the date of this deed.

11.3 **Restrictions Disapplied**

The restrictions on the consolidation of mortgages and on exercise of the power of sale imposed by *sections 93 and 103 respectively of the Law of Property Act 1925* shall not apply to the security constituted by this deed.

12. STATUS, POWERS, REMOVAL AND REMUNERATION OF RECEIVER

12.1 Receiver as Agent

Each Receiver shall be the agent of the Chargor which shall be solely responsible for his or her acts or defaults, and for his or her remuneration and expenses, and be liable on any agreements or engagements made or entered into by him or her. The Security Agent will not be responsible for any misconduct, negligence or default of a Receiver.

12.2 Powers of Receiver

Each Receiver appointed under this deed shall have all the powers conferred from time to time on receivers by the *Law of Property Act 1925* and the *Insolvency Act 1986* (each of which is deemed incorporated in this deed), so that the powers set out in *schedule 1 the Insolvency Act 1986* (to the extent relevant) shall extend to every Receiver, whether or not an administrative receiver.

12.3 Removal of Receiver

The Security Agent may by notice remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated, for whatever reason.

12.4 Remuneration of Receiver

The Security Agent may from time to time fix the remuneration of any Receiver appointed by it. *Sections 109(6) and (8) of the Law of Property Act 1925* shall not apply to a Receiver appointed under this deed.

12.5 Several Receivers

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this deed (unless the document appointing such Receiver states otherwise).

13. PROTECTION OF THIRD PARTIES

13.1 No Obligation to Enquire

No purchaser from, or other person dealing with, the Security Agent, any Receiver or Delegate shall be obliged or concerned to enquire whether:

- (a) the right of the Security Agent or any Receiver to exercise any of the powers conferred by this deed has arisen or become exercisable or as to the propriety or validity of the exercise or purported exercise of any such power; or
- (b) any of the Secured Obligations remain outstanding or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters.

13.2 Receipt Conclusive

The receipt of the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve him of any obligation to see to the application of any moneys or other consideration paid to or by the direction of the Security Agent or any Receiver.

14. PROTECTION OF SECURITY AGENT AND RECEIVER

14.1 Role of Security Agent

The provisions set out in **clause 27** (*Role of the Security Agent*) of the Facility Agreement shall govern the rights, duties and obligations of the Security Agent under this deed.

14.2 Delegation

The Security Agent may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by it under this deed to any person or persons upon such terms and conditions (including the power to sub-delegate) as it may think fit. The Security Agent will not be liable or responsible to the Chargor or any other person for any losses arising from any act, default, omission or misconduct on the part of any Delegate.

14.3 No Liability

Neither the Security Agent nor any Receiver or Delegate shall be liable in respect of any of the Charged Property or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers, unless caused by its or his or her gross negligence or wilful default.

14.4 Possession of Charged Property

Without prejudice to **clause 13.3** (*No Liability*), if the Security Agent or any Delegate enters into possession of the Charged Property, it will not be liable to account as mortgagee in possession and may at any time at its discretion go out of such possession.

14.5 Indemnity

- (a) The Chargor shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (ii) the taking, holding, protection or enforcement of the security constituted by this deed;
 - (iii) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by this deed or by law;
 - (iv) any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this deed;
 - (v) instructing lawyers, accountants, tax advisors, surveyors or other professional advisors or experts as permitted under the Finance Documents; or
 - (vi) acting as Security Agent, Receiver or Delegate (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Chargor expressly acknowledges and agrees that the continuation of its indemnity obligations under this **clause 14.5** will not be prejudiced by any release of security or disposal of any Charged Property.

- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the other Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this **clause 14.5**

15. APPLICATION OF ENFORCEMENT PROCEEDS

15.1 Order of Application

All proceeds of enforcement (whether cash or non-cash) received or recovered by the Security Agent or any Receiver pursuant to this deed shall (subject to the claims of any person having prior rights thereto) be applied in the order and manner specified by **clause 32.1** (*Order of Application*) of the Facility Agreement notwithstanding any purported appropriation by the Chargor.

15.2 Suspense Account

- (a) Until the Secured Obligations are paid in full, each Secured Party may place and keep (to the extent possible and for such time as it shall determine) any recoveries or other proceeds of enforcement (whether cash or non-cash) received pursuant to this deed or otherwise on account of the Chargor's liability in respect of the Secured Obligations in an interest bearing separate suspense account, without having any obligation to apply all or any part of the same in or towards discharge of the Secured Obligations.
- (b) If the security created by this deed is enforced at a time when no amount is due under the Finance Documents but at the time when amounts may or will become due, a Secured Party may pay any recoveries or other proceeds of enforcement into a suspense account.

16. PROTECTION OF SECURITY

16.1 Continuing Security

This security is to be a continuing security notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations or any other matter or thing. This deed shall remain in force and effect as a continuing security for the duration of the Security Period.

16.2 Other Security

- (a) This security is to be in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other security or other right which the Security Agent or any other Secured Party may now or after the date of this deed hold for any of the Secured Obligations.
- (b) This security may be enforced against the Chargor without first having recourse to any other rights of the Security Agent or any other Secured Party.

16.3 Cumulative Powers

- (a) The powers which this deed confers on the Security Agent, the other Secured Parties and any Receiver appointed under this deed are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate.
- (b) The Security Agent, the other Secured Parties or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever.

- (c) The respective powers of the Security Agent, the other Secured Parties and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

16.4 Amounts Avoided

If any amount paid by the Chargor in respect of the Secured Obligations is capable of being avoided or set aside on the liquidation or administration of the Chargor or otherwise, then for the purposes of this deed that amount shall not be considered to have been paid.

16.5 Discharge Conditional

If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or other Obligor, or in respect of any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor under this deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.

16.6 Waiver of Defences

The obligations of the Chargor under this deed will not be affected by an act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this deed (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

16.7 Non-competition

Until all amounts which are due and payable in respect of the 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 under this deed or by reason of any amounts being due and payable, or liability arising under this deed:

- (a) to claim any right of indemnity or contribution in respect of any payment made or other satisfaction of the Chargor's liability under this deed;
- (b) to take the benefit (whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents; and/or

- (c) to claim or prove as a creditor of any Obligor in competition with any Secured Party.

The Chargor shall hold any benefit, payment or distribution received by it contrary to this clause 15.7 (Non-competition) 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 **clause 15** (*Application of Enforcement Proceeds*).

16.8 Subsequent Security - Ruling-off Accounts

If the Security Agent or any other Secured Party receives notice of any subsequent Security or other interest affecting any of the Charged Property (except as permitted by the Facility Agreement) it may open a new account for the Chargor in its books. If it does not do so then (unless it gives express notice to the contrary to the Obligors' Agent), as from the time it receives that notice, all payments made by the Chargor to it shall (in the absence of any express appropriation to the contrary) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations.

16.9 Redemption of Prior Charges

The Security Agent may, at any time after an Event of Default has occurred and is continuing, redeem any prior Security on or relating to any of the Charged Property or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor. The Chargor will on demand pay to the Security Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

17. COSTS AND EXPENSES

17.1 Initial Expenses

The Borrower shall on demand pay to each of the Security Agent and any Receiver the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Agent, by any Delegate) in connection with:

- (a) the negotiation, preparation, printing, execution, completion and perfection of this deed and any other documents referred to in, or incidental to, this deed; and
- (b) any amendment, waiver or consent relating to this deed (and documents, matters or things referred to in this deed).

17.2 Enforcement Expenses

The Borrower shall, within three Business Days of demand, pay to each of the Security Agent, any Receiver and each other Secured Party the amount of all costs and expenses (including legal fees) (subject to any agreed fee arrangements, if any) incurred by it in connection with the enforcement of or the preservation of any rights under (and any documents referred to in) this deed and any proceedings instituted by or against the Security Agent and any Secured Party as a consequence of taking or holding the security created by deed or enforcing these rights.

17.3 Stamp Duties, etc.

The Borrower shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to any applicable stamp duty, registration and other similar Taxes payable in respect of this deed.

17.4 Default Interest

Any amounts payable by the Chargor under this deed will, if not paid when due, carry interest determined on the Default Basis.

18. **SET-OFF**

- (a) Any Secured Party may set off any matured obligation due from the Chargor under the Finance Documents (to the extent beneficially owned by that Secured Party) against any matured obligation owed by that Secured Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) If the relevant obligation or liability of the Chargor is unliquidated or unascertained, the Secured Party may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

19. **NOTICES**

19.1 **Communications in Writing**

Any communication made under or in connection with this deed shall be made be in writing and, unless otherwise stated, may be made by post or by email.

19.2 **Addresses**

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each party to this deed for any communication or document to be made or delivered under or in connection with this deed is as shown immediately after its name on the execution pages of this deed or any substitute address or email address as the party may notify to the Security Agent (or the Security Agent may notify to the parties, if a change is made by the Security Agent) by not less than five Business Days' notice.

19.3 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this deed will only be effective:
 - (i) if by way of email, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under **clause 19.2 (Addresses)**, if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

19.4 **Electronic Communication**

Any communication to be made in connection with this deed, between any two parties to this deed may be made by electronic mail or other electronic means:

- (a) to the extent that those two parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

- (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two parties will be effective only when actually received in readable form and in the case of any electronic communication made by a party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

20. CHANGES TO PARTIES

Assignment by the Security Agent

The Security Agent may at any time assign or otherwise transfer all or any part of its rights under this deed pursuant to the resignation or removal of the Security Agent in accordance with clause 25.13 of the Facility Agreement. The Chargor shall, promptly upon being requested to do so by the Security Agent, enter into such documents as may be necessary to effect such assignment or transfer.

21. CURRENCY

21.1 Conversion

All monies received or held by the Security Agent or any Receiver under this deed may be converted into any other currency which the Security Agent considers necessary to discharge any obligations and liabilities comprised in the Secured Obligations in that other currency at a market rate of exchange then prevailing.

21.2 No Discharge

No payment to the Security Agent (whether under any judgment or court order or otherwise) shall discharge any obligation or liability in respect of which it was made unless and until the Security Agent has received payment in full in the currency in which the obligation or liability is payable or, if the currency of payment is not specified, was incurred. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Security Agent shall have a further separate cause of action in relation to the shortfall and shall be entitled to enforce the security constituted by this deed to recover that amount.

22. MISCELLANEOUS

22.1 Certificates Conclusive

A certificate or determination of the Security Agent as to any amount or rate under this deed is, in the absence of manifest error, conclusive evidence of the matter to which it relates.

22.2 Invalidity of any Provision

If any provision of this deed is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

22.3 Counterparts

This deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this deed.

22.4 **Failure to Execute**

Failure by one or more parties ("**Non-Signatories**") to execute this deed on the date hereof will not invalidate the provisions of this deed as between the other parties who do execute this deed. Such Non-Signatories may execute this deed on a subsequent date and will thereupon become bound by its provisions.

22.5 **Covenant to Release**

Upon the expiry of the Security Period or as otherwise provided for in the Facility Agreement, the Security Agent and each Secured Party shall, at the request and cost of the Chargor, take any action which is necessary to release or re-assign the Charged Property from the security constituted by this deed.

23. **GOVERNING LAW AND JURISDICTION**

- (a) This deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.
- (b) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed or any non-contractual obligation arising out of or in connection with this deed) (a "**Dispute**").
- (c) The parties to this deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

IN WITNESS whereof this deed has been duly executed and delivered on the above date first above written.

Schedule 1


Subsidiary Shares

Company	Number and class of shares	Details of nominees (if any) holding legal title to shares
Octopus Healthcare Development Limited	100 ordinary shares of £1.00 each	

SIGNATORIES

Chargor

Executed as a deed by
**OCTOPUS HEALTHCARE
PROPERTY LIMITED:**

) 

Signature of director:

Name of director:

..... BENJAMIN DAVIS

Signature of witness:

..... Rabbit

Name of witness:

..... LUDOVICA RABITTI

Address of witness:

..... 033 River Mu Two

..... SE 13 SFO

Occupation of witness:

..... Trainee Solicitor

Notice Details

Address: 6th Floor 33 Holborn, London, England, EC1N 2HT

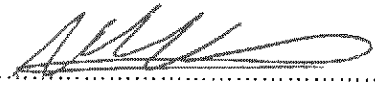
Attention: Lukasz Michalak

Email: lmichalak@octopusinvestments.com

Security Agent

Signed for and on behalf of
INVESTEC BANK PLC:


Name: Alan Macdonald
Authorised Signatory


Name: Matthew Hansford
Authorised Signatory

Notice Details

Address: 30 Gresham Street, London, EC2V 7QP

Attention: Slade Spalding and Joshua Band

Email: slade.spalding@investec.co.uk
joshua.band@investec.co.uk