



Registration of a Charge

Company Name: **MERGON UK LIMITED**

Company Number: **00894340**



Received for filing in Electronic Format on the: **11/01/2023**

XBV07HM8

Details of Charge

Date of creation: **11/01/2023**

Charge code: **0089 4340 0017**

Persons entitled: **CLYDESDALE BANK PLC**

Brief description: **A FIRST FIXED CHARGE OVER THE BOOK DEBTS OF THE COMPANY.**

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: **TIMOTHY IAN GROVER**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 894340

Charge code: 0089 4340 0017

The Registrar of Companies for England and Wales hereby certifies that a charge dated 11th January 2023 and created by MERGON UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th January 2023 .

Given at Companies House, Cardiff on 12th January 2023

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**

Dated

11 January

2023

MERGON UK LTD

and

CLYDESDALE BANK PLC

(trading as Virgin Money)

Mortgage Of Book Debts



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THIS DEED is dated 11 January 2023

Parties

- (1) MERGON UK LTD incorporated and registered in England and Wales with company number 00894340 whose registered office is at Centurion Way, Roman Road Industrial Estate, Blackburn, Lancashire BB1 2LD (the **Borrower**);
- (2) CLYDESDALE BANK PLC (trading as Virgin Money) incorporated and registered in Scotland with company number SC001111 whose registered office is at 30 St Vincents Place, Glasgow, G1 2HL (the **Lender**).

Background

- (A) The Lender has agreed, pursuant to the Facility Agreement, to provide the Borrower with loan facilities on a secured basis.
- (B) Under this Deed, the Borrower provides security to the Lender for the loan facilities made available under the Facility Agreement.

Agreed Terms

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this Deed:

AIB/BOI Debenture: the debenture dated on or after the date of this deed between the Borrower (1) and Allied Irish Banks plc (2).

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

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

Delegate: any person appointed by the Lender or any Receiver pursuant to clause 20, and any person appointed as attorney of the Lender, Receiver or Delegate.

Disruption Event: either or both of:

- a) an event (not caused by, and outside the control of, either party) that materially disrupts the systems for payment or communication or the financial markets needed, in each case, to enable either payment to be made or transactions to be carried out under this Deed; or
- b) any other event (not caused by, and outside the control of, the party whose operations are disrupted), that results in disruption (of a technical or systems-related nature) to the treasury or payments operations of a party and which prevents either or both parties from

(i) performing its payment obligations under the Finance Documents, or (ii) communicating with the other party as required by the terms of this Deed.

Event of Default: has the meaning given to that expression in the Facility Agreement.

Facility Agreement: means the facility agreement dated 16th June 2011 between Clydesdale Bank plc (SC001111) (1) and Weltonhurst Limited (now Mergon UK Ltd) (00894340) (2)

Financial Collateral: has 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).

Insurance Policies: all the contracts and policies of insurance effected or maintained from time to time in respect of the Book Debts.

LPA 1925: the Law of Property Act 1925.

Receiver: a receiver, receiver and manager or administrative receiver appointed by the Lender under clause 17.4.

Secured Assets: all the assets, property and undertaking of the Borrower which are, or are expressed to be, subject to the Security created by, or pursuant to, this Deed (and references to the Secured Assets shall include references to any part of them).

Secured Liabilities: all present and future obligations and liabilities of the Borrower to the Lender, 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 Facility Agreement or this Deed (including, without limitation, those arising under clause b)), together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities.

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 Lender 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.

1.2 Interpretation

In this Deed:

- a) clause and Schedule headings shall not affect the interpretation of this Deed;

- b) a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective successors, permitted assigns and permitted transferees;
- f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- h) a reference to **writing** or **written** includes fax and email;
- i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- j) a reference to **this Deed** (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Deed.
- l) where any statement is qualified by the expression **so far as the Borrower is aware or to Borrower's knowledge** (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry;
- m) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- n) a reference to an **amendment** includes a novation, supplement or variation (and amended shall be construed accordingly);
- o) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

- p) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- q) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- r) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- s) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 Clawback

If the Lender considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

1.4 Schedules

The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

2. COVENANT TO PAY

The Borrower shall, on demand, pay to the Lender 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 Borrower with full title guarantee charges to the Lender by way of first legal mortgage, the Book Debts.

3.2 Fixed charge

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender by way of a first fixed charge:

- a) all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims, and all returns of premiums in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.3;

- b) the benefit of all other contracts, guarantees, appointments and warranties relating to the Book Debts, to the extent not effectively assigned under clause 3.3.

3.3 Assignment

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

- a) the Book Debts; and
- b) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and
- c) the benefit of all other contracts, guarantees, appointments and warranties relating to the Book Debts provided that nothing in this clause 3.3 shall constitute the Lender as mortgagee in possession.

4. LIABILITY OF THE BORROWER

4.1 Liability not discharged

The Borrower'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 Lender that is or becomes wholly or partially illegal, void or unenforceable on any ground;
- b) the Lender 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, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

4.2 Immediate recourse

The Borrower waives any right it may have to require the Lender 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 Borrower.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties

The Borrower makes the representations and warranties set out in this clause 5 to the Lender.

5.2 Ownership of Secured Assets

The Borrower is the sole legal and beneficial owner of, and has good, valid and marketable title to the Secured Assets.

5.3 No Security

Save for the AIB/BOI Debenture the Secured Assets are free from any Security other than the Security created by this Deed.

5.4 No adverse claims

The Borrower has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

5.5 No adverse covenants

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

5.6 No breach of laws

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

5.7 No interference in enjoyment

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

5.8 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 Borrower or otherwise.

5.9 No prohibitions

There is no prohibition on assignment in any Insurance Policy, and the entry into this Deed by the Borrower does not, and will not, constitute a breach of any Insurance Policy or any other policy, agreement, document, instrument or obligation binding on the Borrower or its assets.

5.10 Enforceable security

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

5.11 Times for making representations and warranties

The Borrower makes the representations and warranties set out in clause 5.2 to clause 5.10 to the Lender on the date of this Deed 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. COVENANTS

6.1 Realising Book Debts

- a) The Borrower shall as an agent for the Lender, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Lender.
- b) The Borrower shall not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of any Designated Account.
- c) The Borrower shall, if called on to do so by the Lender, execute a legal assignment of the Book Debts to the Lender on such terms as the Lender may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

6.2 Negative pledge and disposal restrictions

The Borrower shall not at any time save for the AIB/BOI Debenture¹, except with the prior written consent of the Lender:

- 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;
- 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; or
- c) create or grant (or purport to create or grant) any interest in any Secured Asset in favour of a third party.

6.3 Preservation of Secured Assets

The Borrower shall not (except as permitted under clause 6.1 or with the prior written consent of the Lender) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

6.4 Compliance with laws and regulations

- a) The Borrower shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- b) The Borrower shall:
 - i. comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of them or any part of them;

¹ WF Note: the AIB/BOI debenture is required to be carved out of this covenant in order for (i) Mergon UK Limited to be able to enter into the AIB/BOI debenture and (ii) to align with the corresponding representation at 5.3.

- 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. promptly 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.

6.5 Enforcement of rights

The Borrower shall use its best endeavours to:

- a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Borrower and forming part of the Secured Assets of the covenants and other obligations imposed on the Borrower's counterparties (including each insurer in respect of an Insurance Policy); and
- b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Lender may require from time to time.

6.6 Notice of misrepresentations and breaches

The Borrower shall, promptly on becoming aware of any of the same, notify the Lender 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.

6.7 Notices to be given by Borrower

The Borrower shall:

- a) on the execution of this Deed and as so requested by the Lender from time to time:
 - i. give notice to the relevant insurers of the assignment of the Borrower's rights and interest in, and under, each Insurance Policy (including the proceeds of any claims under that Insurance Policy) pursuant to clause 3.3a); and
 - ii. procure that each insurer provides to the Lender within five Business Days an acknowledgement of the notice of the Lender's interest;
- b) on the execution of this Deed and as so requested by the Lender from time to time:

- i. give notice to the other parties to each other contract, guarantee, appointment, warranty or authorisation relating to the Book Debts and any other document to which the Borrower is a party of the assignment of the Borrower's rights and interest in and under it pursuant to clause 3.3c); and
 - ii. procure that each addressee of any such notice provides to the Lender within five Business Days an acknowledgement of the notice of the Lender's interest to the Lender.
- c) obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this clause 6.7.

6.8 Maintenance of Book Debts

The Borrower shall:

- a) keep or procure to be kept accurate, complete and up to date records of all Book Debts and to make those records available to the Lender on demand; and
- b) not permit any Book Debt to be: modified, upgraded, supplemented or altered other than permitted by this Deed.

6.9 Documents

The Borrower shall, on the execution of this Deed, deposit with the Lender and the Lender shall, for the duration of this Deed, be entitled to hold all:

- a) ledgers, records and documents relating to the Secured Assets that are in the possession or control of the Borrower and, if these are not within the possession or control of the Borrower, the Borrower undertakes to obtain possession of all log books; and
- b) Insurance Policies.

6.10 Information

The Borrower shall promptly notify the Lender in writing of any action, claim or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Borrower's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

6.11 No invalidation of insurance

The Borrower shall not do or omit to do, or permit to be done or omitted, any thing that may invalidate or otherwise prejudice any Insurance Policy.

6.12 Proceeds from Insurance Policies

All monies payable under any Insurance Policy maintained by the Borrower at any time (whether or not the security constituted by this Deed has become enforceable) shall:

- a) be paid immediately to the Lender;
- b) if they are not paid directly to the Lender by the insurers, be held, pending such payment, by the Borrower as trustee of the same for the benefit of the Lender; and
- c) at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which such monies are received or in or towards discharge or reduction of the Secured Liabilities

6.13 Payment of outgoings

The Borrower shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Lender.

6.14 Compliance with covenants

The Borrower shall observe and perform all covenants, stipulations and conditions to which any Secured Assets, or the use of them, is or may be subjected and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed.

6.15 Maintenance of interests in Secured Assets

The Borrower shall not, without the prior written consent of the Lender in any other way dispose of, or agree to dispose of, surrender or create any legal or equitable interest in the whole or any part of any Secured Assets.

7. POWERS OF THE LENDER

7.1 Power to remedy

- a) The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this Deed.
- b) The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.
- c) Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this Deed, shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 22.1.

7.2 Exercise of rights

- a) The rights of the Lender under clause 7.1 are without prejudice to any other rights of the Lender under this Deed.

- b) The exercise of any rights of the Lender under this Deed shall not make the Lender liable to account as a mortgagee in possession.

7.3 Lender 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 Lender 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.

7.4 Conversion of currency

- a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this clause 7.4) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.
- b) Any such conversion shall be effected at the Lender's then prevailing spot selling rate of exchange for such other currency against the existing currency.
- c) Each reference in this clause 7.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

7.5 New accounts

- a) If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Lender may open a new account for the Borrower in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- b) If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 9.5a), then, unless the Lender gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Lender.

7.6 Indulgence

The Lender 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 Borrower) 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 Borrower for the Secured Liabilities.

8. EVENTS OF DEFAULT

- 8.1 Each of the events or circumstances set out in Clause 9 to Clause 14 is an Event of Default.

9. NON-PAYMENT

- 9.1 The Borrower fails to pay any sum payable by it under this Deed when due, unless its failure to pay is caused solely by:

- a) an administrative error or technical problem and payment is made within three Business Days of its due date; or
- b) a Disruption Event and payment is made within three Business Days of its due date.

10. NON-COMPLIANCE

- 10.1 The Borrower fails (other than a failure to pay) to comply with any provision of this Deed and (if the Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of:

- a) the Lender notifying the Borrower of the default and the remedy required; and
- b) the Borrower becoming aware of the default.

11. MISREPRESENTATION

- 11.1 Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, this Deed is (or proves to have been) incomplete, untrue, incorrect or misleading in any material respect when made, repeated or deemed made.

12. CESSATION OF BUSINESS

- 12.1 The Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

13. ILLEGALITY

- 13.1 All or any part of this Deed becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.

14. REPUDIATION AND RESCISSION

- 14.1 The Borrower repudiates or rescinds or shows an intention to repudiate or rescind this Deed or any of them.

15. WHEN SECURITY BECOMES ENFORCEABLE

- 15.1 Security becomes enforceable on Event of Default

The security constituted by this Deed shall become immediately enforceable if an Event of Default occurs.

15.2 Discretion

After the security constituted by this Deed has become enforceable, the Lender 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.

16. ENFORCEMENT OF SECURITY

16.1 Enforcement powers

- a) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- b) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall be immediately exercisable at any time after the security constituted by this Deed has become enforceable under clause 15.1.
- c) Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

16.2 Prior Security

- a) At any time after the security constituted by this Deed has become enforceable, the Lender may:
 - i. redeem any prior Security over any Secured Asset;
 - ii. procure the transfer of that Security to itself; and
 - iii. settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Borrower).
- b) The Borrower shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this Deed as part of the Secured Liabilities.

16.3 Privileges

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

16.4 Exclusion of liability

Neither the Lender, nor any Receiver or any Delegate shall be liable to the Borrower or any other person:

- a) (by reason of entering into possession of a Secured Asset, or for any other reason) to account as mortgagee in possession in respect of all or any of the Secured Assets;
- b) for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable; or
- c) for any expense, loss or liability:
 - i. relating to the enforcement of, or any failure to enforce or delay in enforcing, any security constituted by or pursuant to this Deed;
 - ii. relating to an exercise of rights, or by any failure to exercise or delay in exercising, rights under this Deed; or
 - iii. arising in any other way in connection with this Deed,

except that this does not exempt the Lender or any Receiver or Delegate from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Lender or the relevant Receiver or Delegate.

16.5 Conclusive discharge to purchasers

The receipt of the Lender, 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 Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

17. RIGHT OF APPROPRIATION

17.1 To the extent that:

- a) the Secured Assets constitute Financial Collateral; and
- b) this deed and the obligations of the Borrower under it constitute a Security Financial Collateral Arrangement,

17.2 the Lender 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 Lender may, in its absolute discretion, determine.

17.3 The value of any Secured Assets appropriated in accordance with this clause shall be:

- a) in the case of cash, the amount standing to the credit of each of the Borrower's accounts with any bank, financial institution or other person, together with any accrued but unpaid interest, at the time the right of appropriation is exercised; and
- b) in the case of Investments, the market price of those Investments at the time the right of appropriation is exercised determined by the Lender by reference to a recognised market index or by any other

method that the Lender may select (including independent valuation).

- 17.4 The Borrower agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

18. RECEIVER

18.1 Appointment

At any time after the security constituted by this Deed has become enforceable, or at the request of the Borrower, the Lender 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.

18.2 Removal

The Lender may, without further notice, (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), 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.

18.3 Remuneration

The Lender 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.

18.4 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 Lender 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.

18.5 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 Lender despite any prior appointment in respect of all or any part of the Secured Assets.

18.6 Agent of the Borrower

Any Receiver appointed by the Lender under this Deed shall be the agent of the Borrower and the Borrower 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 Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

19. POWERS OF RECEIVER

19.1 General

- a) Any Receiver appointed by the Lender under this Deed shall, in addition to the powers conferred on it by statute, have the powers set out in clause 19.1 to clause 19.16.
- b) A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.
- c) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.
- d) Any exercise by a Receiver of any of the powers given by clause 19 may be on behalf of the Borrower, the directors of the Borrower or itself.

19.2 Employ personnel and advisers

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 it thinks fit.

19.3 Remuneration

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

19.4 Realise Secured Assets

A Receiver may collect and get in the Secured Assets or any part of them in respect of which it 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.

19.5 Manage Secured Assets

A Receiver may do all such things as may be necessary for the ownership, management or operation of the Secured Assets.

19.6 Sell Book Debts

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

19.7 Legal action

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

19.8 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.

19.9 Make settlements

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Borrower or relating in any way to any Secured Asset.

19.10 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 it thinks fit.

19.11 Insurance

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 22, 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 Borrower.

19.12 Borrow

A Receiver may, for whatever purpose it thinks fit, raise and borrow money either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this Deed).

19.13 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 Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

19.14 Delegation

A Receiver may delegate its powers in accordance with this Deed.

19.15 Absolute beneficial owner

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it 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.

19.16 Incidental powers

A Receiver may do any other acts and things that it:

- a) may consider desirable or necessary for realising any of the Secured Assets;

- b) 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; or
- c) lawfully may or can do as agent for the Borrower.

20. DELEGATION

20.1 Delegation

The Lender 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 clause 24.1).

20.2 Terms

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

20.3 Liability

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

21. APPLICATION OF PROCEEDS

21.1 Order of application of proceeds

All monies received or recovered by the Lender, a Receiver or a Delegate under this Deed or in connection with the realisation or enforcement of all or part of, the security constituted by this Deed (other than sums received pursuant to any Insurance Policy), 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 (but without prejudice to the Lender's rights to recover any shortfall from the Borrower):

- a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (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 the Secured Liabilities in any order and manner that the Lender determines; and
- c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

21.2 Appropriation

Neither the Lender, 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.

21.3 Suspense account

All monies received by the Lender, a Receiver or a Delegate under this Deed (other than sums received pursuant to any Insurance Policy, which are not going to be applied in or towards discharge of the Secured Liabilities):

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

22. COSTS AND INDEMNITY

22.1 Costs

The Borrower shall, promptly on demand, pay to, or reimburse, the Lender and any Receiver on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

- a) the negotiation, preparation, execution and delivery of this Deed;
- b) the Secured Assets;
- c) taking, holding, protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this Deed; or
- d) 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, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding up or administration of the Borrower) at the rate and in the manner specified in the Facility Agreement.

22.2 Indemnity

The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- 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 Borrower in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this clause 22.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

23. FURTHER ASSURANCE

23.1 The Borrower shall promptly, at its own expense, take whatever action the Lender 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 Lender or any Receiver in respect of any Secured Asset,

23.2 including, without limitation 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 Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

24. POWER OF ATTORNEY

24.1 Appointment of attorneys

By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things which:

- a) the Borrower 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 Lender, any Receiver or any Delegate.

24.2 Ratification of acts of attorneys

The Borrower 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 clause 24.1.

25. RELEASE

25.1 Subject to clause 32.3, at the end of the Security Period, the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to:

- a) release the Secured Assets from the security constituted by this Deed; and
- b) reassign the Secured Assets to the Borrower.

26. ASSIGNMENT AND TRANSFER

26.1 Assignment by Lender

- a) At any time, without the consent of the Borrower, the Lender may assign any of its rights or transfer any of its rights and obligations under this Deed.
- b) The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Secured Assets and this Deed that the Lender considers appropriate.

26.2 Assignment by Borrower

The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this Deed or enter into any transaction which would result in any of those rights or obligations passing to another person.

27. SET-OFF

27.1 Lender's right of set-off

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 27 shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.

27.2 No obligation to set off

The Lender is not obliged to exercise its rights under clause 27.1. If it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.

27.3 Exclusion of Borrower's right of set-off

All payments made by the Borrower to the Lender under this Deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

28. AMENDMENTS, WAIVERS AND CONSENTS

28.1 Amendments

No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

28.2 Waivers and consents

- a) A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- b) A failure by the Lender to exercise, or delay by it in exercising, any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Lender shall be effective unless it is in writing.

28.3 Rights and remedies

The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

29. PARTIAL INVALIDITY

29.1 Partial invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

30. COUNTERPARTS

30.1 Counterparts

- a) This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- b) Transmission of an executed counterpart of this Deed (but for the avoidance of doubt not just a signature page) by fax or email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Deed. If either 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.
- c) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

31. THIRD PARTY RIGHTS

31.1 Third party rights

- a) Except as expressly provided elsewhere in this Deed, 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.
- b) Notwithstanding any term of this Deed, the consent of any person who is not a party to this Deed is not required to rescind or vary this Deed at any time.

32. FURTHER PROVISIONS

32.1 Independent security

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

32.2 Continuing security

The security constituted by 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 Lender discharges this Deed in writing.

32.3 Discharge conditional

Any release, discharge or settlement between the Borrower and the Lender shall be conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced, set aside or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding up, administration, receivership or for any other reason. Despite any such release, discharge or settlement:

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

32.4 Certificates

Any certification or determination by the Lender of any rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

32.5 Consolidation

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

33. NOTICES

33.1 Delivery

Any notice or other communication given to a party under or in connection with this Deed shall be:

- a) in writing;
- b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- c) sent to:

the Borrower at:

Centurion Way, Roman Road Industrial Estate,
Blackburn, BB1 2LD

Attention: [NAME]

the Lender at:

30 St Vincent Place, Glasgow, G1 2HL

or to any other address or fax number notified in writing by one party to the other from time to time.

33.2 Receipt by Borrower

Any notice or other communication that the Lender gives to the Borrower shall be deemed to have been received:

- a) if delivered by hand, at the time it is left at the relevant address;
- b) if posted by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; and
- c) if sent by fax, when received in legible form.

A notice or other communication given as described in clause 36.2a) or clause 36.2c) on a day that is not a Business Day, or after normal business hours, in the place it is received shall be deemed to have been received on the next Business Day.

33.3 Receipt by Lender

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

33.4 Service of proceedings

This clause 33 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

34. GOVERNING LAW AND JURISDICTION

34.1 Governing law

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

34.2 Jurisdiction

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

34.3 Other service

The Borrower irrevocably consents to any legal action or proceedings under clause 34.2 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

In witness whereof this document has been executed and delivered on the date first stated above.

Executed as deed by MERGON UK LIMITED acting by a director, in the presence of:

.....

Director

.....

Signature of Witness


.....

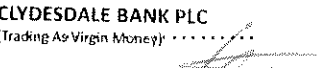
.....

.....

Address of Witness

Executed as deed by CLYDESDALE BANK LIMITED acting by a director, in the presence of:

CLYDESDALE BANK PLC (Trading as Virgin Money)	
	
Duly Authorised Official	
Full Name	IAN ROBERT CRAGG
Director	
Position	BUSINESS SUPPORT OFFICER

CLYDESDALE BANK PLC (Trading As Virgin Money)	
	
Duly Authorised Official	
Full Name	IAN ROBERT CRAGG
BUSINESS SUPPORT OFFICER, Position: BUSINESS FULFILMENT TEAM - SECURITIES	

CLYDESDALE BANK PLC (Trading as Virgin Money)	
Business Fulfilment Team - Securities	
7-8 North Avenue	
Clydebank G81 2NT	
Address of Witness	