



Registration of a Charge

Company Name: **NOBODY'S CHILD LIMITED**

Company Number: **09567792**



XC2F0BFL

Received for filing in Electronic Format on the: **28/04/2023**

Details of Charge

Date of creation: **25/04/2023**

Charge code: **0956 7792 0002**

Persons entitled: **MARKS AND SPENCER PLC**

Brief description: **THE CHARGOR CHARGED BY WAY OF FIXED CHARGED A TRADE MARK WITH REGISTRATION NUMBER 3114358. FOR FURTHER DETAILS OF THE INTELLECTUAL PROPERTY CHARGED PLEASE REFER TO THE INSTRUMENT.**

Contains fixed charge(s).

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

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: **WE CERTIFY THAT, SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006, THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE PART OF THE CHARGING INSTRUMENT SIGNED BY OR ON BEHALF OF THE**

**CHARGOR, AND A CORRECT COPY OF THE SIGNATURE PAGE TO
EACH OTHER PART OF SUCH CHARGING INSTRUMENT.**

Certified by:

DENTONS UK AND MIDDLE EAST LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9567792

Charge code: 0956 7792 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 25th April 2023 and created by NOBODY'S CHILD LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th April 2023 .

Given at Companies House, Cardiff on 28th April 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**



Legal Charge

Dated 25 April 2023

Nobody's Child Limited
(the Chargor)

Marks and Spencer plc
(the Lender)

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Legal charge

Dated 25 April 2023

Between

- (1) **Nobody's Child Limited**, a company incorporated under the laws of England and Wales with registered number 09567792 having its registered office at 10-11 Greenland Place Camden, London, England, NW1 0AP (the **Chargor**); and
- (2) **Marks and Spencer plc**, a company incorporated under the laws of England and Wales with registered number 00214436 having its registered office at Waterside House, 35 North Wharf Road, London, W2 1NW (the **Lender**).

Recitals

- A The Lender has agreed to make credit facilities available on the terms of the Facility Agreement.
- B The Chargor has agreed to provide Security to the Lender to secure the payment and discharge of the Secured Liabilities.

This deed witnesses

1 Definitions and interpretation

1.1 Definitions

Words and expressions defined in the Facility Agreement shall have the same meanings in this Deed unless they are expressly defined in it and, in addition, in this Deed:

Act means the Law of Property Act 1925.

Default Rate means the rate of interest specified in, and calculated in accordance with, clause 5.3 of the Facility Agreement.

Domain Names means:

- (a) each domain name described in Part 4 of Schedule 1; and
- (b) all legal, equitable and other rights in it.

Facility Agreement means the facility agreement dated on or about the date of this Deed between the Chargor and the Lender.

Intellectual Property means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and

- (b) the benefit of all applications and rights to use such assets (which may now or in the future subsist).

Receiver means a receiver appointed pursuant to this Deed or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and, if the Lender is permitted by law to appoint an administrative receiver, includes an administrative receiver.

Secured Liabilities means the liabilities of the Chargor to the Lender under or pursuant to the Finance Documents other than the Loan Note Instrument.

Security means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect.

Security Assets means all of the Chargor's assets which are the subject of any Security created or to be created by this Deed.

Security Period means the period starting on the date of this Deed and ending on the date on which the Lender is satisfied that:

- (a) all of the Secured Liabilities have been fully and finally discharged; and
- (b) it is under no commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to the Chargor pursuant to the Finance Documents.

Shareholders' Agreement means the shareholders' agreement relating to the Chargor dated 12 November 2021, as amended, varied or replaced from time to time.

Stock means the stock of raw materials, works in progress, finished goods and other stock in trade, packaging and promotional materials from time to time owned by the Chargor.

Trade Marks means:

- (a) each trade mark described in Part 1 of Schedule 1; and
- (b) all legal, equitable and other rights in it.

Trade Mark Applications means each application described in Part 2 of Schedule 1.

Trade Mark Property means:

- (a) all Trade Marks;
- (b) all Trade Mark Applications;
- (c) any goodwill of the Chargor's business in the goods or services in respect of which any Trade Mark is registered or to which any Trade Mark Application relates;
- (d) any other Intellectual Property (including any set out in Part 3 of Schedule 1) associated with the Trade Marks and/or Trade Mark Applications, including copyright subsisting in and/or protecting them and devices comprised within the Trade Marks and/or Trade Mark Applications; and

- (e) any other right (including the right to bring proceedings against any third party) which may arise from, relate to, or be associated with any Trade Mark or Trade Mark Application or, in either case, its use in the Chargor's business.

1.2 Construction

- 1.2.1 The principles of construction set out in clause 1.2 of the Facility Agreement shall apply to this Deed, insofar as they are relevant to it and subject to any necessary changes, as they apply to the Facility Agreement.
- 1.2.2 Unless a contrary intention appears, any reference in this Deed to:
 - (a) this **Deed** is a reference to this Deed as amended, varied, novated, supplemented and replaced from time to time;
 - (b) the **Chargor**, the **Lender** or a **Receiver** includes any one or more of its assigns, transferees and successors in title (in the case of the Chargor, so far as any such is permitted); and
 - (c) the **Lender** or a **Receiver** (except for the references in Clause 17 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.

1.3 Third party rights

- 1.3.1 Unless expressly provided to the contrary 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 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Deed.
- 1.3.2 The parties to this Deed may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person that is not a party (without prejudice to the terms of the other Finance Documents).
- 1.3.3 Any person described in Clauses 11 (*Protection of purchasers*) or Clause 12 (*Protection of the Lender and Receivers*) may, subject to this Clause 1.3 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Deed which expressly confers rights on it.

1.4 Effect as a deed

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Lender.

1.5 Law of Property (Miscellaneous Provisions) Act 1989

The terms of any agreement in writing and of any side letters between the parties are incorporated in this Deed to the extent required to ensure that any purported disposition of an interest in land contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

1.6 Conflicts with Facility Agreement

If there is a conflict or inconsistency between the provisions of this Deed and the provisions of the Facility Agreement, the provisions of the Facility Agreement shall prevail and, where such

conflict exists, compliance by the Chargor with the terms of the Facility Agreement shall be deemed to be compliance with the conflicting or inconsistent terms of this Deed.

2 Covenant to pay

The Chargor covenants with the Lender that it will on demand pay and discharge the Secured Liabilities when due.

3 Creation of Security

3.1 Fixed charge

The Chargor charges by way of fixed charge:

- (a) the Trade Mark Property;
- (b) the Domain Names; and
- (c) all fees, royalties and other rights of every kind deriving from the Trade Mark Property and the Domain Names.

3.2 Floating charge

3.2.1 The Chargor charges by way of floating charge all its present and future business, undertaking and assets (including the Stock).

3.2.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to any floating charge created by this Deed.

3.3 Trust

If or to the extent that the assignment or charging of any Security Asset is prohibited, the Chargor holds it on trust for the Lender.

4 Nature of Security created

The Security created under this Deed is created:

- (a) as a continuing security to secure the payment and discharge of the Secured Liabilities;
- (i) over all assets of the kind described which are owned by the Chargor and, to the extent that it does not own those assets, shall extend to any right or interest which it may have in them;
- (b) in favour of the Lender; and
- (c) with full title guarantee.

5 Conversion of floating charge

5.1 Conversion on notice

Subject to Clause 5.2 (*Limitation*), the Lender may by notice to the Chargor at any time during the Security Period convert the floating charge created by the Chargor under this Deed into a fixed charge in respect of any Security Asset specified in that notice if:

- (a) the Security created by this Deed has become enforceable; or
- (b) the Lender considers that Security Asset to be in danger of being seized, attached, charged, taken possession of or sold under any form of distress, sequestration, execution or other process or otherwise to be in jeopardy (in which case the conversion to a fixed charge shall only affect the relevant Security Asset).

5.2 Limitation

- 5.2.1 Clause 5.1 (*Conversion on notice*) shall not apply by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.
- 5.2.2 Clause 5.2.1 above does not apply in respect of any floating charge referred to in subsection (4) of section A52 of Part A1 of the Insolvency Act 1986.

5.3 Automatic conversion

The floating charge created by the Chargor under this Deed will convert automatically into fixed charges:

- (a) if the Lender receives notice of an intention to appoint an administrator of the Chargor;
- (b) if any steps are taken, (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional liquidator, administrator or Receiver in respect of the Chargor over all or any part of its assets, or if such person is appointed;
- (c) if the Chargor creates or attempts to create Security over all or any of the Security Assets other than pursuant to this Deed or without the prior written consent of the Lender;
- (d) on the crystallisation of any other floating charge over the Security Assets;
- (e) if any person seizes, attaches, charges, takes possession of or sells any Security Asset under any form of distress, sequestration, execution or other process, or attempts to do so; and
- (f) in any other circumstances prescribed by law.

6 Representations and warranties

In entering into this Deed the Lender has relied on the representations of the Chargor set out in this Clause 5, and the Chargor warrants to the Lender on the date of this Deed, as set out in this Clause 5.

6.1 Trade Marks

- 6.1.1 It is the legal, beneficial and registered proprietor of each Trade Mark.

- 6.1.2 It is not aware of any reason why any Trade Mark may for any reason be incapable of being the subject of the Security created by this Deed.
- 6.1.3 Each Trade Mark is valid and subsisting and, so far as the Chargor is aware, does not infringe the rights of any third party.
- 6.1.4 It is unaware of any infringement or likely infringement of any Trade Mark;
- 6.1.5 All renewal fees due in respect of each Trade Mark have been paid.

6.2 Trade Mark Applications

- 6.2.1 It is the registered applicant for each Trade Mark Application.
- 6.2.2 It is not aware of any reason why its entitlement to make any Trade Mark Application should be challenged.
- 6.2.3 To the best of its knowledge, there is no reason why any Trade Mark Application will not proceed to registration.

6.3 Trade Mark Property

- 6.3.1 It is not aware of any conduct, action or lack of action which will or may have the effect of prejudicing the validity of any Trade Mark Property or adversely affecting its value.
- 6.3.2 In respect of the Intellectual Property referred to in limb (c) of the Trade Mark Property:
 - (a) is the sole legal and beneficial owner of such Intellectual Property; and
 - (b) does not, in using the Intellectual Property, infringe any Intellectual Property of any third party.
- 6.3.3 Other than as disclosed in writing to the Lender on or before the date of this Deed:
 - (a) it is not restricted in any material way in its use or exercise of any Trade Mark Property; and
 - (b) to the best of its knowledge, information and belief (having made all reasonable enquiries), there are no licences, agreements or Security (other than in favour of the Lender) which relate to or affect any Trade Mark Property or the Security created by this Deed.
- 6.3.4 It is not aware of any claim from any third party relating to ownership of any Trade Mark or Trade Mark Application, or of any claim that any Trade Mark or Trade Mark Application infringes any trade mark (whether registered or unregistered) or any other Intellectual Property of any third party.

6.4 Domain Names

- 6.4.1 It is the legal, beneficial and registered proprietor of each Domain Name.
- 6.4.2 It is not aware of any reason why any Domain Name may for any reason be incapable of being the subject of the Security created by this Deed.

6.4.3 Each Domain Name is active and, so far as the Chargor is aware, does not infringe the rights of any third party.

6.4.4 All renewal fees due in respect of each Domain Name have been paid.

6.5 Ranking

The Security created pursuant to this Deed has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security.

6.6 Repetition

The representations and warranties set out in this Clause 5 shall survive the execution of this Deed and are deemed to be repeated by reference to the facts and circumstances then existing on each date on which the representations and warranties set out in clause 10 of the Facility Agreement are deemed to be repeated.

7 Positive covenants

The covenants in this Clause 7 remain in force from the date of this Deed until the expiry of the Security Period.

7.1 Deposit of documents

On the date of this Deed and at all times during the Security Period as soon as it receives them (and in any event as soon as the Lender so requests), the Chargor shall deposit with the Lender, in respect of or in connection with the Security Assets:

- (a) all deeds, certificates and other documents of or evidencing title; and
- (b) any other documents which the Lender may from time to time require for perfecting its title, or the title of any purchaser,

all of which will be held by the Lender at the expense and risk of the Chargor.

7.2 Preservation of the Security Assets

7.2.1 The Chargor shall:

- (a) protect, enforce, preserve, maintain and renew as and when necessary all Trade Marks and Intellectual Property;
- (b) observe and perform all covenants, undertakings, laws and regulations from time to time affecting any Security Asset or the use or enjoyment of it;
- (c) pay all Tax, duties, fees, charges, assessments, impositions and outgoings which are properly payable at any time during the Security Period in respect of any Security Asset (and if it fails to pay that amount when due, the Lender may pay it);
- (d) at its own cost, defend any proceedings (including proceedings to seize, attach, charge, take possession of or sell) brought by a third party relating to any Security Asset.

- 7.2.2 The Chargor shall at all times during the Security Period promptly notify the Lender if it receives notification, or otherwise becomes aware, of:
- (a) any actual, alleged, threatened or suspected infringement of any Trade Mark;
 - (b) any actual, alleged, threatened or suspected infringement of any third party's trade marks or other Intellectual Property or other rights arising from the use of any Trade Mark; or
 - (c) any actual, threatened or suspected cancellation or other legal action in respect of any Trade Mark or other Intellectual Property.
- 7.2.3 The Chargor shall take all such steps, including the commencement of legal proceedings, as may be necessary to:
- (a) prosecute to registration the Trade Mark Applications; and
 - (b) safeguard and maintain the validity, reputation, integrity, registration or subsistence of the Trade Marks.
- 7.2.4 The Chargor shall consult with and comply with the reasonable requests of the Lender relating to:
- (a) any legal proceedings necessary to discharge the Chargor's obligations under Clause 7.2.3; or
 - (b) the defence of any legal proceedings brought by any third party relating to or affecting the Trade Marks.
- 7.2.5 The Chargor shall:
- (a) keep all tangible assets which form part of the Security Assets in good and substantial repair, fair wear and tear excepted and permit the Lender free access at all reasonable times and on reasonable notice to view their state and condition;
 - (b) observe and perform all covenants, undertakings, laws and regulations from time to time affecting any Security Asset or its use or enjoyment;
 - (c) pay all taxes, levies, imposts, rents, rates, duties, fees, charges, assessments, impositions, calls, instalments and outgoings which are properly payable at any time during the Security Period in respect of any Security Asset or by the owner or occupier of it (and if it fails to pay that amount when due, the Lender may pay it);
 - (d) notify the Lender of any action commenced by a third party to seize, attach, charge, take possession of or sell any Security Asset which (to the best of its knowledge and belief) has been started or threatened; and
 - (e) at its own cost, defend any proceedings (including proceedings to seize, attach, charge, take possession of or sell) brought by a third party relating to any Security Asset.

7.3 Payments without deduction

The Chargor covenants with the Lender that all payments to be made by it under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

7.4 Reserved matters

Each of the Chargor and the Lender acknowledges and agrees that, for the avoidance of doubt, the Domain Names constitute "material... intellectual property" for the purposes of paragraph 9 of part 1 of schedule 4 (*Consent matters*) to the Shareholders' Agreement.

8 Negative covenants

The covenants in this Clause 8 remain in force from the date of this Deed until the expiry of the Security Period.

8.1 Disposals

- 8.1.1 The Chargor shall not enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, license, transfer, loan or otherwise dispose of any Security Asset, nor enter into an agreement to make any such disposal.
- 8.1.2 Clause 8.1.1 does not apply to a disposal of any Security Asset which, at the time of that disposal, is subject to the floating charge created by this Deed and which is:
- (a) made in the ordinary course of the day-to-day trading activities of the relevant Chargor; or
 - (b) of cash, and not otherwise prohibited by the Finance Documents; or
 - (c) for the purchase of an asset to replace directly the asset the subject of that disposal; or
 - (d) other than with the prior written consent of the Lender.

8.2 Negative pledge

- 8.2.1 The Chargor shall not create or permit to subsist any Security over any Security Asset.
- 8.2.2 Clause 8.2.1 does not apply to:
- (i) any Security created pursuant to this Deed;
 - (ii) any netting or set-off arrangement entered into by the Chargor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances; or
 - (iii) any lien arising by operation of law and in the ordinary course of the Chargor's day-to-day trading activities.

8.3 Preservation of the Security Assets

- 8.3.1 The Chargor shall not without the prior written consent of the Lender:

- (a) enter into any onerous obligation or restriction affecting any Security Asset;
- (b) settle or compromise any proceedings referred to in Clause 7.2.4 (*Preservation of the Security Assets*);
- (c) take any Security in connection with its liability under this Deed from any guarantor of, or provider of Security for, any of the Secured Liabilities;
- (d) permit any Trade Mark to lapse for any reason or allow any thing to be done or left undone the effect of which will, or may be to, imperil or prejudice any Trade Mark, its registration, subsistence, validity, reputation or integrity;
- (e) permit any Trade Mark to fall into disuse or to be used in such a way that it is put at risk by becoming generic or by being identified as disreputable in any way;
- (f) assign, licence, sub-licence, sever, dispose of or otherwise part with control of a Trade Mark or Trade Mark Application;
- (g) change the specification of any Trade Mark or permit any disclaimer, condition, restriction or memorandum to be entered on the Register of Trade Marks the effect of which will or may be to detrimentally affect the value of any Trade Mark;
- (h) fail to continue to prosecute any Trade Mark Application to registration or fail to take any steps necessary to ensure so far as possible that any Trade Mark Application is accepted for registration by the Trade Mark Registry; or
- (i) do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Lender of any Trade Mark Property and/or the Security over any Trade Mark Property created by Clause 3 (*Creation of Security*).

9 Enforcement

9.1 When Security becomes enforceable

The Security created by this Deed shall become enforceable on the occurrence of an Event of Default which is continuing.

9.2 Powers on enforcement

At any time after the Security created by this Deed has become enforceable, the Lender may (without prejudice to any other of its rights and remedies and without notice to the Chargor) do all or any of the following:

- (a) sell or otherwise dispose of the Security Assets and otherwise exercise all the other powers and rights conferred on mortgagees by the Act, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the Act;
- (b) exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Security Asset, without the restrictions imposed by sections 99 and 100 of the Act;
- (c) subject to Clause 10.1.1 (*Method of appointment and removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Security Assets; and

- (d) appoint an administrator of the Chargor.

9.3 Disposal of the Security Assets

In exercising the powers referred to in paragraph (a) of Clause 9.2 (*Powers on enforcement*), the Lender or any Receiver may sell or dispose of all or any of the Security Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

9.4 Application of moneys

- 9.4.1 Any moneys received or recovered by the Lender or a Receiver pursuant to this Deed after the Security created by it has become enforceable shall, to the extent permitted by law, be applied in the following order of priority:

- (a) in or towards the pro rata payment or provision for:
 - (i) all costs and expenses incurred by the Lender under or in connection with this Deed; and
 - (ii) all sums owing to a Receiver;
- (b) in or towards the discharge of the Secured Liabilities in any order chosen by the Lender; and
- (c) then, in the payment of any surplus to the Chargor or other person entitled to it, and section 109(8) of the Act shall not apply.

- 9.4.2 Clause 9.4.1 will override any appropriation made by the Chargor.

10 Appointment and powers of Receivers

10.1 Method of appointment and removal

- 10.1.1 If section A52 of Part A1 of the Insolvency Act 1986 applies to this Deed, the Lender is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under Part A1 of the Insolvency Act 1986 other than in respect of a floating charge referred to in subsection (4) of section A52 of Part A1 of the Insolvency Act 1986.
- 10.1.2 Every appointment or removal of a Receiver, of any delegate or of any other person by the Lender pursuant to this Deed may be made in writing under the hand of any officer or manager of the Lender.

10.2 Powers of Receiver

Every Receiver shall have all the powers:

- (a) of the Lender under this Deed;
- (b) conferred by the Act on mortgagees in possession and on receivers appointed under the Act;

- (c) in relation to, and to the extent applicable to, the Security Assets or any of them, the powers specified in Schedule 1 of the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver within the meaning of that Act); and
- (d) in relation to any Security Asset, which he would have if he were its absolute beneficial owner.

10.3 Joint or several

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

10.4 Receiver as agent

Every Receiver shall be the agent of the Chargor which shall be solely responsible for his acts and defaults and for the payment of his remuneration.

10.5 Receiver's remuneration

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Lender, and the maximum rate specified in section 109(6) of the Act shall not apply.

11 Protection of purchasers

No purchaser or other person dealing with the Lender or any Receiver shall be bound or concerned:

- (a) to see or enquire whether the right of the Lender or any Receiver to exercise any of the powers conferred by this Deed has arisen or not;
- (b) with the propriety of the exercise or purported exercise of those powers; or
- (c) with the application of any moneys paid to the Lender, to any Receiver or to any other person.

12 Protection of the Lender and Receivers

12.1 Exclusion of liability

None of the Lender, any Receiver or any of their respective officers or employees shall have any responsibility or liability:

- (a) for any action taken, or any failure to take any action, in relation to all or any of the Security Assets;
- (b) to account as mortgagee in possession or for any loss upon realisation of any Security Asset;
- (c) for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under Clause 18 (*Currency*); or

- (d) for any other default or omission in relation to all or any of the Security Assets for which a mortgagee in possession might be liable,

except in the case of gross negligence or wilful misconduct on the part of that person.

12.2 General indemnity

12.2.1 The Chargor shall indemnify the Lender, any Receiver and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses, and other liabilities incurred by them in respect of all or any of the following:

- (a) any act or omission by any of them in relation to all or any of the Security Assets;
- (b) any payment relating to or in respect of all or any of the Security Assets which is made at any time by any of them;
- (c) any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
- (d) carrying out or purporting to carry out any of the rights, powers and discretions conferred on them by or permitted under this Deed; and
- (e) any breach by the Chargor of any of its covenants or other obligations to the Lender,

except in the case of gross negligence or wilful misconduct on the part of that person.

12.2.2 The Chargor shall pay interest at the Default Rate on the sums payable under this Clause from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

12.3 Indemnity out of the Security Assets

The Lender, any Receiver and their respective officers and employees shall be entitled to be indemnified out of the Security Assets in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 12.2 (*General indemnity*).

13 Preservation of Security

13.1 Reinstatement

If any payment by the Chargor or discharge given by the Lender (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:

- (a) the liability of the Chargor and the Security created by the Chargor under this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Lender shall be entitled to recover the value or amount of that Security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

13.2 Waiver of defences

Neither the Security created by this Deed nor the obligations of the Chargor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to the Chargor, or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, the Chargor or other person;
- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any person;
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of the Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- (e) any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or
- (g) any insolvency, liquidation, administration or similar procedure.

13.3 Chargor intent

Without prejudice to the generality of Clause 13.2 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security created by this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following:

- (a) acquisitions of any nature;
- (b) increasing working capital;
- (c) enabling investor distributions to be made;
- (d) carrying out restructurings;
- (e) refinancing existing facilities;
- (f) refinancing any other indebtedness;
- (g) making facilities available to new borrowers;
- (h) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and

- (i) any fees, costs and/or expenses associated with any of the foregoing.

13.4 Immediate recourse

The Chargor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

13.5 Appropriations

During the Security Period the Lender may:

- (a) refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 9.4 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Secured Liabilities.

13.6 Deferral of Chargor's rights

During the Security Period and unless the Lender otherwise directs, the Chargor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Deed or the enforcement of the Security created by this Deed:

- (a) to receive or claim payment from, or be indemnified by another entity in the Chargor's group;
- (b) to claim any contribution from any guarantor of, or provider of Security in respect of, the Chargor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under any Finance Document or of any guarantee or Security taken pursuant to, or in connection with, the Finance Documents by the Lender;
- (d) to exercise any right of set-off against another entity in the Chargor's group; and/or
- (e) to claim or prove as a creditor of another entity in competition with the Lender.

13.7 Additional Security

This Deed is in addition to, is not in any way prejudiced by and shall not merge with any contractual right or remedy or other Security now or in the future held by or available to the Lender.

13.8 New accounts

If the Lender receives notice (actual or otherwise) of any subsequent Security over or affecting all or any of the Security Assets it may open a new account or accounts in the name of the Chargor and, if it does not do so, it shall nevertheless be treated as if it had done so at

the time when it received or was deemed to have received notice of that subsequent Security, and as from that time all payments made by the Chargor to the Lender:

- (a) shall be credited or be treated as having been credited to the new account; and
- (b) shall not operate to reduce the Secured Liabilities at the time when the Lender received or was deemed to have received such notice.

14 Tacking

For the purposes of section 94(1) of the Act the Lender confirms that it shall make further advances to the Chargor on the terms and subject to the conditions of the Finance Documents.

15 Registration of charge

The Chargor appoints the Lender as its agent to apply (at the cost of the Lender) for the particulars of this Deed to be made on the Register of Trade Marks pursuant to the provisions of section 25 of the Trade Marks Act 1994 or any broadly equivalent provisions provided by the laws of the jurisdictions within which any Trade Mark and/or Trade Mark Application is registered. The Chargor agrees to execute (at its own cost) all documents and forms reasonably required to enable such particulars to be entered on the Register of Trade Marks.

16 Further assurance

16.1 Registration at Companies House

The Chargor consents to the registration of this Deed at Companies House pursuant to Part 25 of the Companies Act 2006.

16.2 Further Action

The Chargor shall, at its own expense, promptly take any action and sign or execute any further documents which the Lender may reasonably require in order to:

- (a) give effect to the requirements of this Deed;
- (b) protect, preserve and perfect the Security intended to be created by or pursuant to this Deed;
- (c) protect and preserve the ranking of the Security intended to be created by or pursuant to this Deed with any other Security over any assets of the Chargor; or
- (d) facilitate the realisation of all or any of the Security Assets or the exercise of any rights, powers and discretions conferred on the Lender or any Receiver in connection with all or any of the Security Assets,

and any such document may disapply section 93 of the Act.

16.3 Law of Property (Miscellaneous Provisions) Act 1994

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to the provisions set out in this Clause 16.

17 Power of attorney

The Chargor irrevocably and by way of security appoints each of:

- (a) the Lender;
- (b) any delegate or sub-delegate of, or other person nominated in writing by, an officer of the Lender; and
- (c) any Receiver,

jointly and severally as the Chargor's attorney, in the Chargor's name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit after the Security created by this Deed has become enforceable and/or following the failure by the Chargor to comply with a written request from the Lender within 3 Business Days of receipt of such written request to take any action and sign or execute any further documents which the Chargor is required to take, sign or execute in accordance with this Deed. The Chargor agrees, promptly on the request of the Lender or any Receiver, to ratify and confirm all such actions taken and documents signed or executed.

18 Currency

18.1 The Spot Rate

In this Clause 18, the **Spot Rate** means, in relation to the Lender, the spot rate of exchange of the Lender for the purchase of any currency with any other currency in the London foreign exchange market.

18.2 Conversion of moneys received

The Lender may convert any moneys received, recovered or realised in any currency under this Deed (including the proceeds of any previous conversion under this Clause 18.2) from their existing currency into any other currency, by purchasing that other currency at the Spot Rate.

19 Discharge of Security

Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities, unless any third party has any subrogation or other rights in respect of the Security created by this Deed at that time, the Lender shall, or shall procure that its appointees will, at the request and cost of the Chargor release the Security Assets from this Deed. Section 93 of the Act shall not apply to this Deed.

20 Costs and expenses

20.1 Transaction expenses

The Chargor shall promptly on demand pay the Lender the amount of all costs and expenses (including pre-agreed legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of this Deed.

20.2 Amendment costs

If the Chargor requests an amendment, waiver, consent or release of or in relation to this Deed, the Chargor shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including pre-agreed legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

20.3 Enforcement costs

The Chargor shall, within three Business Days of demand, pay to the Lender or any Receiver the amount of all costs and expenses (including legal fees) incurred by the Lender or any Receiver in connection with the enforcement of, or the preservation of any rights under, this Deed or the investigation of any possible Default.

21 Assignment

The Lender may assign any of its rights under this Deed to any person to whom it assigns or transfers any of its rights or obligations under the Facility Agreement.

22 Notices

22.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by e-mail or letter.

22.2 Addresses

22.2.1 The address and e-mail (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute address, e-mail or department or officer as either party may notify to the other by not less than five Business Days' notice.

22.2.2 The addresses referred to in Clause 22.2 are:

(a) The Chargor:

Address: 10-11 Greenland Place, Camden, London NW1 0AP

Attention: Andy Brown and Andrew Xeni

E-mail: andy.brown@nobodyschild.com and
andrew.xeni@nobodyschild.com

(b) The Lender:

Address: Marks and Spencer plc, Waterside House, 35 North Wharf Road,
London, W2 1NW

Attention: Nick Folland (nick.folland@marks-and-spencer.com)
Robert Lyons (Robert.lyons@marks-and-spencer.com)

22.3 Delivery

22.3.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

- (a) if by way of letter, (i) when it has been left at the relevant address or (ii) two Business Days (or, in the case of airmail, five Business Days) after being deposited in the post postage prepaid (or, as the case may be, airmail postage prepaid), in an envelope addressed to it at that address, or
- (b) if by way of e-mail, when actually received (or made available) in readable form, but if received after 5:00 p.m. shall be deemed only to become effective on the following day,

and, if a particular department or officer is specified as part of its address details provided under Clause 22.2 (*Addresses*), if addressed to that department or officer.

22.3.2 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified in Clause 22.2.2 (or any substitute department or officer as the Lender shall specify for this purpose).

22.4 English language

22.4.1 Any notice given under or in connection with this Deed must be in English.

22.4.2 All other documents provided under or in connection with this Deed must be:

- (a) in English; or
- (b) if not in English, and if so required by the Lender accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

23 Calculations and certificates

23.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

23.2 Certificates and determinations

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

24 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.

25 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

26 Amendments and waivers

Any term of this Deed may be amended or waived only with the written consent of the Chargor and the Lender.

27 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.

28 Governing law and enforcement

28.1 Governing law

English law governs this Deed, its interpretation and any non-contractual obligations arising from or connected with it.


28.2 Jurisdiction

- 28.2.1 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) (a **Dispute**).
- 28.2.2 The parties 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.
- 28.2.3 Notwithstanding Clause 28.2.1, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

Executed as a deed and delivered on the date appearing at the beginning of this Deed.

Schedule 1

Part 1 – Trade Marks

Proprietor	Trade Mark	Class(es)	Registration number	Expiry Date	Country
Nobody's Child Limited	nobody's child	25, 35	3114358	22/06/2025	UK
Nobody's Child Limited	nobody's child	25, 35	914269906	19/06/2025	UK
Nobody's Child Limited	nc 	25, 35	3114872	24/06/2025	UK
Nobody's Child Limited	nobody's child	25, 35	14269906	19/06/2025	EU
Nobody's Child Limited	nobody's child	25, 35	86681431	24/05/2026	USA
Nobody's Child Limited	NOBODY'S CHILD	25, 35	38019485	06/04/2031	China

Part 2 – Trade Mark Applications

Proprietor	Trade Mark	Class(es)	Application number	Filing date	Country
Nobody's Child Limited	nobody's child	25, 35	2316520	22/11/2022	Australia

Part 3 – Intellectual Property

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Part 4 – Domain Names

www.nobodyschild.com

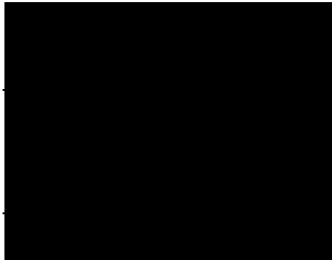
EXECUTION PAGE

The Chargor

Executed as a deed by)
Nobody's Child Limited acting by two)
directors:)

.....

.....



Andrew Brown

The Lender

Signed for and on behalf of)
Marks and Spencer plc)

EXECUTION PAGE

The Chargor

Executed as a deed by)
Nobody's Child Limited acting by two)
directors:)

..... Director

..... Director

The Lender

Signed by Nick Folland)
for and on behalf of **Marks**)
and Spencer plc

