



Registration of a Charge

Company Name: **CLOSE BROTHERS LIMITED**

Company Number: **00195626**



Received for filing in Electronic Format on the: **02/05/2022**

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Details of Charge

Date of creation: **21/04/2022**

Charge code: **0019 5626 0005**

Persons entitled: **ORBITA FUNDING 2022-1 PLC**

Brief description:

Contains floating charge(s) .

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **SHEPHERD AND WEDDERBURN LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 195626

Charge code: 0019 5626 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st April 2022 and created by CLOSE BROTHERS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd May 2022 .

Given at Companies House, Cardiff on 3rd May 2022

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



Companies House



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

FLOATING CHARGE

BY:

- (1) **CLOSE BROTHERS LIMITED**, a company incorporated in England and Wales with limited liability (registered number 195626), whose registered office is at 10 Crown Place, London EC2A 4FT (the "**Chargor**"),

IN FAVOUR OF:

- (2) **ORBITA FUNDING 2022-1 PLC**, a company incorporated in England and Wales with limited liability (registered number 13723071), whose registered office is at 5 Churchill Place, 10th Floor, London, E14 5HU (the "**Issuer**").

CONSIDERING THAT the Chargor has agreed to secure certain obligations to the Issuer under the Receivables Sale and Purchase Agreement in relation to Scottish Vehicles by the grant to the Issuer of a floating charge in Scottish form, being this instrument ("**Instrument**").

NOW IT IS HEREBY PROVIDED AND DECLARED AS FOLLOWS:

1. INTERPRETATION

1.1 In this Instrument:

"**Charged Assets**" means Vehicle Sale Proceeds and the Chargor's rights under vehicle sale contracts relative thereto in respect of Purchased Receivables in so far as they relate to Scottish Vehicles which are or may be from time to time while this Instrument is in force comprised in the property and undertaking of the Chargor;

"**Insolvency Act**" means the Insolvency Act 1986;

"**Master Definitions Schedule**" means the master definitions schedule dated on or about the date of delivery of this Instrument executed by, *inter alios*, the Chargor and the Issuer;

"**Scottish Vehicle**" means any Vehicle to which a Purchased Receivable relates which is situated in Scotland;

"**Secured Liabilities**" means all present and future obligations and liabilities of the Chargor to the Issuer in respect of the Charged Assets under and in terms of the Transaction Documents, whether actual, contingent, sole, joint and/or several or otherwise and whether as principal, guarantor, cautioner or surety or trustee (and whether or not the Issuer was the original creditor or beneficiary in respect thereof); and

"**Security Period**" means the period beginning on the date hereof and ending on the date upon which all the Secured Liabilities (actual or contingent) which have arisen or which may arise have been irrevocably paid and discharged or the floating charge hereby created has been finally released and discharged.

- 1.2 Capitalised terms in this Instrument shall, except where the context otherwise requires and except where otherwise defined in this Instrument, have the meaning given to them in the Master Definitions Schedule.

- 1.3 The interpretation provisions set out in the Master Definitions Schedule shall be expressly and specifically incorporated into this Instrument as though they were set out in full in this Instrument, with any necessary changes. In the event of any conflict between the provisions of this Instrument and the Master Definitions Schedule, the Master Definitions Schedule shall prevail.

- 1.4 This Instrument is the Scottish Vehicle Sale Proceeds Floating Charge referred to in the Master Definitions Schedule.
- 1.5 References in this Instrument to a "fixed security" shall be construed as a reference to a fixed security as defined by Section 486 of the Companies Act 1985 as in force at the date hereof.
- 1.6 Any appointment of a receiver under Clause 6 hereof may be made by any successor or assignee or transferee of the Issuer, and the Chargor hereby irrevocably appoints each such successor or assignee or transferee to be its attorney in the terms and for the purpose stated in Clause 12 hereof.

2. BOND

The Chargor undertakes to the Issuer that it will pay or discharge to the Issuer or as it may direct all the Secured Liabilities when the same become due for payment or discharge under and in terms of the Transaction Documents.

3. FLOATING CHARGE

- 3.1 The Chargor, as security for the payment and discharge of all the Secured Liabilities **HEREBY GRANTS** in favour of the Issuer a floating charge over the whole of the Charged Assets.
- 3.2 The floating charge hereby created shall rank in priority to any fixed security which shall be created by the Chargor after its execution hereof, other than a fixed security in favour of the Issuer for itself or in any other capacity under and in terms of the Transaction Documents, and to any other floating charge which shall be created by the Chargor after its execution hereof and, subject as aforesaid, no such fixed security or other floating charge shall rank in priority to or equally with the floating charge hereby created by it.
- 3.3 Paragraph 14 of Schedule B1 to the Insolvency Act (incorporated by Schedule 16 of the Enterprise Act 2002) shall apply to this Instrument.

4. RESTRICTIONS ON DEALING

The Chargor shall not, without the prior written consent of the Issuer:

- (a) create, incur, assume or permit to subsist any Adverse Claim (unless arising by operation of law) on all or any part of the Charged Assets; nor
- (b) sell, transfer, hire out, lend, discount, factor, charge or otherwise dispose of, deal in or remove all or any of the Charged Assets,

(in all cases) except where expressly permitted by the Transaction Documents.

5. UNDERTAKINGS

- 5.1 For the duration of the Security Period, the provisions of Clause 6 (*Representation and Warranties of the Seller*) and Clause 10.1 (*Seller Covenants and Undertakings*) of the Receivables Sale and Purchase Agreement shall apply *mutatis mutandis* as if set out herein (including all defined terms therein) but so that references therein to the "Seller" shall be construed herein as references to the Chargor.
- 5.2 The Chargor will notify the Issuer immediately in the event of any creditor exercising diligence against it or any of the Charged Assets or taking any steps which might be expected to lead thereto.

6. ENFORCEMENT

- 6.1 At any time upon or after the occurrence of (a) a Servicer Termination Event, or (b) an Insolvency Event in respect of the Chargor, the power to appoint a receiver of the Charged Assets shall be immediately exercisable in relation to the security created by the Chargor by or pursuant to this Instrument, and the Issuer may then by instrument in writing appoint any person or persons (if more than one with power to act both jointly and severally) to be a receiver of the Charged Assets. In addition and without prejudice to the foregoing provisions of this sub-clause, in the event that any person appointed in pursuance hereof to be a receiver as aforesaid shall be removed by a court or shall otherwise cease to act as such, then the Issuer shall be entitled so to appoint another person as receiver in his place.
- 6.2 A receiver so appointed shall have and be entitled to exercise all the powers conferred upon such a receiver by the Insolvency Act and in addition to and without limiting these powers, such receiver shall have power to:
- (a) implement and exercise all or any of the Chargor's powers and/or rights and/or obligations under any contract or other agreement forming a part of the Charged Assets;
 - (b) sell, assign, transfer, exchange, hire out, or otherwise dispose of or realise the Charged Assets or any part thereof; and
 - (c) do all such other acts and things as he may consider necessary or desirable for protecting or realising the Charged Assets or any part thereof or incidental or conducive to any of the matters, powers or authorities conferred on a receiver under or by virtue of or pursuant to this Instrument, and exercise in relation to the Charged Assets or any part thereof all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same; and use the name of the Chargor for all and any of the purposes aforesaid.

7. OFFICE OF RECEIVER

- 7.1 Any receiver appointed under Clause 6 shall be the agent of the Chargor for all purposes and (subject to the provisions of the Insolvency Act) the Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and for his remuneration and his costs, charges and expenses, and the Issuer shall not incur any liability therefor (either to the Chargor or any other person) by reason of the Issuer making his appointment as such receiver or for any other reason whatsoever.
- 7.2 Any receiver appointed under Clause 6 shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved upon the basis of charging from time to time adopted by the receiver in accordance with the current practice of the receivers of his firm. Such remuneration shall be payable by the Chargor alone and the amount of such remuneration shall form part of the Secured Liabilities and accordingly be secured on the Charged Assets under the floating charge created by this Instrument.

8. APPLICATION OF ENFORCEMENT MONEYS

All moneys received by the Issuer or any receiver shall be applied by them, subject to the claims of any creditors ranking in priority to or *pari passu* with the claims of the Issuer hereunder, in the following order:

- (a) in or towards payment of all costs, charges and expenses of or incidental to the appointment of a receiver and the exercise of all or any of his powers, including his remuneration and all outgoings properly paid by and liabilities incurred by him and/or the Issuer as a result of such exercise;
- (b) in or towards satisfaction of the Secured Liabilities in accordance with the Transaction Documents; and

(c) any surplus shall be paid to the Chargor or any other person entitled thereto.

9. RELEASE AND DISCHARGE

9.1 The Issuer may at any time release the Chargor from any or all of its obligations under or pursuant to this Instrument and/or all or any part of the Charged Assets from the security created by this Instrument upon such terms as the Issuer may think fit but nothing in this Instrument, shall constitute or is intended to constitute a release of any of the Charged Assets.

9.2 Upon irrevocable payment or discharge in full of the Secured Liabilities, the Issuer shall at the Chargor's request and cost release to the Chargor (or as it may direct) the Charged Assets from the floating charge hereby created.

10. PROTECTION OF SECURITY

10.1 The security created by this Instrument shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever, and in particular (but without prejudice to the generality of the foregoing) shall not be considered satisfied by an intermediate repayment or satisfaction of part only of the Secured Liabilities, and shall continue in full force and effect until total and irrevocable satisfaction of all the Secured Liabilities.

10.2 The security created by this Instrument shall be in addition to and shall not in any way prejudice or be prejudiced by any collateral or other security, right or remedy which the Issuer may now or any time hereafter hold for all or any part of the Secured Liabilities.

10.3 No failure on the part of the Issuer to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Instrument or any other document relating to or securing all or any part of the Secured Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Instrument and any such other document are cumulative and not exclusive of any right or remedies provided by law.

10.4 Each of the provisions in this Instrument shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise howsoever the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

10.5 Neither the security created by this Instrument nor the rights, powers, discretions and remedies conferred upon the Issuer by this Instrument or by law shall be reduced, discharged, impaired or otherwise affected by reasons of:

- (a) any present or future security, guarantee, indemnity or other right or remedy held by or available to the Issuer being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Issuer from time to time exchanging, varying, realising, releasing or failing to perfect or enforce any of the same; or
- (b) the Issuer compounding with, discharging or releasing or varying the liability of, or granting any time, indulgence or concession to, the Chargor or any other person or renewing, determining, varying or increasing any accommodation or transaction in any manner whatsoever or concurring in accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from the Chargor or any other person; or
- (c) any act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor instead of cautioner or by anything done or omitted which but for this provision might operate to exonerate the Chargor from the Secured Liabilities; or

- (d) any legal limitation, disability, incapacity or other similar circumstances relating to the Chargor.
- 10.6 The Issuer shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Instrument or by law, to:
- (a) take any action or obtain judgment or decree in any court against the Chargor;
 - (b) make or file any claim to rank in a winding-up or liquidation of the Chargor; or
 - (c) enforce or seek to enforce any other security taken, or exercise any right or plea available to the Issuer, in respect of any of the Chargor's obligations other than this Instrument.

11. FURTHER ASSURANCE

The Chargor shall execute and do all such assurances, acts and things and deliver all such documents as the Issuer may require for perfecting or protecting the security created by or pursuant to this Instrument over the Charged Assets in accordance with Clause 14 (*Further Assurance*) of the Receivables Sale and Purchase Agreement and shall, in particular, execute all fixed securities, floating charges, assignments, securities, transfers, dispositions and assurances of the Charged Assets whether to the Issuer or to its nominee(s) or otherwise and give all notices, orders and directions which the Issuer, acting reasonably, may think expedient.

12. MANDATE AND ATTORNEY

- 12.1 The Chargor hereby irrevocably appoints the Issuer and any receiver to be its mandatory and attorney for it and on its behalf and in its name or otherwise and as its act or deed to create or constitute, or to make any alteration or addition or deletion in or to, any documents which the Issuer or receiver may require for perfecting or protecting the title of the Issuer or receiver to the Charged Assets or for vesting any of the Charged Assets in the Issuer or receiver or its nominees or any purchaser and to re-deliver the same thereafter and otherwise generally to sign, seal and deliver and otherwise perfect any fixed security, floating charge, document or act which may be required or may be deemed proper by the Issuer or receiver on or in connection with any sale, disposition, realisation, getting in or other enforcement by the Issuer or receiver of all or any of the Charged Assets.
- 12.2 The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any such mandatory or attorney shall do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 12.

13. INDEMNITY

The Issuer, every receiver and every attorney, manager, agent or other person appointed by the Issuer or any such receiver in connection herewith shall be entitled to be indemnified out of the Charged Assets in respect of all liabilities and expenses properly incurred by them or him in the execution or purported execution of any of the powers, authorities or discretions vested in them or him pursuant hereto and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Charged Assets, but excluding any FATCA Withholding, and the Issuer and any receiver may retain and pay all sums in respect of the same out of any moneys received under the powers hereby conferred.

14. AVOIDANCE OF PAYMENTS

Any amount which has been paid by a party to the Issuer and which is, in the opinion of the Issuer, capable of being reduced or restored or otherwise avoided in whole or in part in the liquidation or administration of that party, shall not be regarded as having been irrevocably paid for the purposes of this Instrument.

15. **NOTICES**

All notices, requests, demands and other communications to be given under this Instrument shall be made as set out in Clause 19 (*Notices*) of the Receivables Sale and Purchase Agreement.

16. **GOVERNING LAW AND JURISDICTION**

16.1 This Instrument shall be governed by, and construed in all respect in accordance with, the law of Scotland.

16.2 For the benefit of the Issuer, the Chargor irrevocably agrees that the Court of Session in Edinburgh is to have jurisdiction to settle any disputes which may arise out of or in connection with this Instrument and that, accordingly, any suit, action or proceedings arising out of or in connection with this Instrument ("**Proceedings**") may be brought in that court. The Chargor irrevocably waives any objection to Proceedings in that court on the grounds of venue or on the ground that the Proceedings have been brought in an inconvenient forum.

16.3 Nothing in this Clause 16 shall affect any right any person may have to take Proceedings in any other jurisdiction nor shall the taking of Proceedings in any jurisdiction preclude any person from taking Proceedings in any other jurisdiction.

16.4 The Chargor irrevocably consents to any process in any Proceedings anywhere being served by mailing a copy by registered or certified prepaid post to it in accordance with the terms of Clause 15 above. Nothing shall affect the right to serve process in any other manner permitted by law.

17. **COUNTERPARTS**

17.1 This Instrument may be executed in any number of counterparts and by each of the parties on separate counterparts.

17.2 Where executed in counterpart:

- (a) this Instrument will not take effect until each of the counterparts has been delivered;
- (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- (c) the date of delivery may be inserted in the testing clause in the blank provided for the effective date of this Instrument.

18. **CONSENT TO REGISTRATION**

The Chargor hereby consents to the registration of this Instrument and of any such certificate for preservation and execution:

IN WITNESS WHEREOF this Instrument consisting of this and the preceding six pages is executed by the parties in counterpart as undernoted, and with an effective date of 21 April 2022.

SUBSCRIBED for and on behalf of the
said **ORBITA FUNDING 2022-1 PLC**
acting by its corporate director:

)
)
)
)

at: London

on: 20 April 2022

Charmaine de Castro
.....
(Print Full Name)


.....
(Signature)
per pro CSC Directors (No.1) Limited

in the presence of:

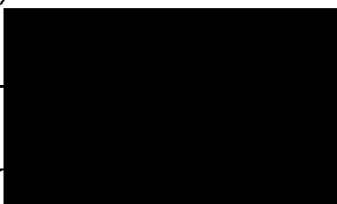
Witness signature

_____

Witness name

Victoria Pawelec

Witness address



SUBSCRIBED for and on behalf of)
CLOSE BROTHERS LIMITED)
by its director/authorised signatory)
)

at: CROWN PLACE, LONDON EC2A 4FT

on: 19 APRIL 2022

NICHOLAS JAMES BOURNE
(Print Full Name)

(Signature)
Director / Authorised Signatory

in the presence of:

Witness signature

Witness name

Witness address

ALEXANDER JAMES TURNBULL