



Registration of a Charge

Company name: **FLASH BIDCO LIMITED**

Company number: **08458656**



X909ZOLV

Received for Electronic Filing: **06/03/2020**

Details of Charge

Date of creation: **24/02/2020**

Charge code: **0845 8656 0003**

Persons entitled: **SILICON VALLEY BANK AS SECURITY AGENT**

Brief description:

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: **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 ORIGINAL INSTRUMENT.**

Certified by: **OSBORNE CLARKE LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8458656

Charge code: 0845 8656 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th February 2020 and created by FLASH BIDCO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th March 2020 .

Given at Companies House, Cardiff on 9th March 2020

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

We certify that, save for material redacted pursuant to s. 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Dated this 2 March 2020

Signed Osborne Clarke LLP (ecr)

Osborne Clarke LLP

**Supplemental Share Charge and
Assignment of Subordinated Debt**

2 Temple Back East

Temple Quay

(1) Flash Bidco Limited

Bristol BS1 6EG

(2) Silicon Valley Bank as Security Agent

Dated 24 February 2020

This Deed is subject to the terms of an Intercreditor Agreement made between, among others, the parties to this Deed and the Mezzanine Finance Parties

Osborne Clarke LLP

Contents

1.	Definitions and interpretation.....	2
2.	Covenant to pay	4
3.	Security Assets.....	4
4.	Incorporation.....	5
5.	Continuation	5
6.	Governing law.....	5
7.	Jurisdiction.....	6
	Schedule 1.....	7
	Signatories to this Deed	8

This Deed is made on

24 February 2020

Between:

- (1) **Flash Bidco Limited** (a company incorporated in England and Wales with registration number 08458656) whose registered office is at Suite 1, 3rd Floor 11-12 St. James's Square, London, United Kingdom, SW1Y 4LB (the "**Chargor**"); and
- (2) **Silicon Valley Bank** as security agent and trustee for the Secured Parties (as defined below) (in such capacity, the "**Security Agent**").

Background

- (A) Pursuant to the Original Share Charge the Chargor created Security over the Security Assets for, amongst other things, its present and future obligations and liabilities under the Finance Documents.
- (B) The Company is entering into amendment and restatement agreements by which it is amending, amongst other things, the Senior Facilities Agreement and Mezzanine Facility Agreement and, as a condition precedent to each relevant amendment and restatement agreement, the Chargor is required to enter into this Deed.
- (C) This Deed is supplemental to the Original Share Charge. The Chargor and the Security Agent each consider that the security interests created by the Chargor under the Original Share Charge secure payment of the Secured Liabilities (as defined below), but enter into this Deed in case they do not.

This Deed witnesses as follows:

1. **Definitions and interpretation**

1.1 **Definitions**

Unless otherwise defined in this Deed, the terms defined in clause 1.1 of the Original Share Charge shall have the same meanings when used in this Deed and the following definitions shall apply:

"Intercreditor Agreement" means the intercreditor agreement dated 5 September 2019 as amended on or around the date of this Deed and made between, among others, the Original Chargor, the Subordinated Creditors (as defined in the Intercreditor Agreement), the Security Agent, the Original Debtors and the Intra-Group Lenders (each as defined in the Intercreditor Agreement) as amended, novated, supplemented, extended or restated from time to time including on or about the date of this Deed.

"Mezzanine Facility Agreement" means the mezzanine facility agreement made between the Borrower as borrower, WestRiver Innovation Lending Fund VIII, L.P. as lender and others dated 5 September 2019 as amended and restated on or about the date of this Deed and as further amended, novated, supplemented, extended or restated from time to time.

"Mezzanine Finance Documents" has the meaning given to the term "**Finance Documents**" in the Mezzanine Facility Agreement and in each case as amended, novated, supplemented, extended or restated from time to time.

"Original Share Charge" means the share charge and assignment of subordinated debt dated 5 September 2019 and made between the Chargor and the Security Agent (as trustee for the Secured Parties).

"Secured Liabilities" means:

- (a) all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor and the Chargor to any Secured Party under each Senior Finance Document; and
- (b) all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor and the Chargor to any Secured Party under each Mezzanine Finance Document.

"Senior Facilities Agreement" means the senior facilities agreement dated 5 September 2019 and made between, amongst others the Borrower and the Security Agent as amended and restated on or about the date of this Deed and as further amended, novated, supplemented, extended or restated from time to time.

"Senior Finance Documents" means the Finance Documents, in each case as defined in the Senior Facilities Agreement and in each case as amended, novated, supplemented, extended or restated from time to time.

1.2 **Construction**

- (a) Unless a contrary intention appears, (i) until the Senior Discharge Date sub-clause 1.2 (*Construction*) and sub-clause 1.4 (*Third party rights*) of the Senior Facilities Agreement apply to this Deed and (ii) after the Senior Discharge Date sub-clause 1.2 (*Construction*) and sub-clause 1.4 (*Third party rights*) of the Mezzanine Facility Agreement apply to this Deed, and (as applicable) shall be deemed to be incorporated into this Deed, mutatis mutandis, as though set out in full in this Deed, with any reference to **"this Agreement"** being deemed to be a reference to **"this Deed"**, subject to any other necessary changes.
- (b) Any references to the Security Agent or any Receiver shall include its Delegate.
- (c) Unless a contrary indication appears, references to clauses and schedules are to clauses and schedules to this Deed and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear.
- (d) References to **"this Deed"**, the **"Senior Facilities Agreement"**, the **"Mezzanine Facility Agreement"**, any other **"Finance Document"** or any other agreement or instrument is a reference to this Deed, the Senior Facilities Agreement, the Mezzanine Facility Agreement, that other Finance Document or that other agreement or instrument as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the obligations of any member of the Group or provides for further advances).
- (e) **"Secured Liabilities"** includes obligations and liabilities which would be treated as such but for the liquidation, administration or dissolution of or similar event affecting any member of the Group.
- (e) If the Security Agent reasonably considers that an amount paid by any member of the Group to a Secured Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of such member of the Group, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.
- (f) The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

1.3 ***Supplemental security***

- (a) All security created under this Deed is created in addition to and does not affect the security created by the Original Share Charge.
- (b) Where this Deed purports to create a first fixed security interest, that security interest will be a second ranking security interest ranking subject to the equivalent security interest created by the Original Share Charge until such time as the security interest created by the Original Share Charge ceases to have effect. All references in this Deed to "full title guarantee" shall be qualified by reference to the Original Share Charge.
- (c) Where a right or asset has been assigned (subject to a proviso for re-assignment on redemption) under the Original Share Charge and the same asset or right is expressed to be assigned again under this Deed, that second assignment will take effect as a fixed charge over the right or asset and will only take effect as an assignment if the relevant security interest created by the Original Share Charge ceases to have effect at a time when this Deed still has effect.

1.4 ***Implied covenants for title***

The obligations of the Chargor under this Deed shall be in addition to the covenants for title deemed to be included in this Deed by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

1.5 ***Effect as a Deed***

This Deed is intended to take effect as a deed notwithstanding that the Security Agent may have executed it under hand only.

1.6 ***Trusts***

- (a) The Security Agent holds the benefit of this Deed on trust for the Secured Parties in accordance with the terms of clause 19 (The Security Agent) of the Intercreditor Agreement.
- (b) The perpetuity period for any trusts created by this Deed is 125 years.

1.7 ***Finance Document***

This Deed is a Senior Finance Document and a Mezzanine Finance Document.

2. ***Covenant to pay***

The Chargor as primary obligor covenants with the Security Agent (as trustee for the Secured Parties) that it will on demand pay to the Security Agent the Secured Liabilities when the same fall due for payment.

3. ***Security Assets***

3.1 ***Security***

The Chargor, as security for the payment of the Secured Liabilities:

- (a) charges in favour of the Security Agent, with full title guarantee, by way of first fixed charge,
 - (i) all Shares; and
 - (ii) all other Investments, and

- (b) assigns, by way of security, with full title guarantee to the Security Agent all its rights, title and interest in the Subordinated Debt.

3.2 **Limited Recourse**

Notwithstanding clause 2 (*Covenant to pay*):

- (a) the liability of the Chargor to the Secured Parties under clause 2 (*Covenant to pay*) shall be:
 - (i) limited in aggregate to an amount equal to that recovered by the Secured Parties as a result of the enforcement of this Deed with respect to the Security Assets; and
 - (ii) satisfied only from the proceeds of sale or other disposal or realisation of the Security Assets pursuant to this Deed; and
- (b) the Secured Parties shall not have any recourse under clause 2 (*Covenant to pay*) to any assets of the Chargor other than the Security Assets,

provided that nothing in this sub-clause shall limit the recourse of the Secured Parties to the Chargor in respect of any breach by the Chargor of any obligation (other than clause 2 (*Covenant to pay*)) or representation given by the Chargor under this Deed.

4. **Incorporation**

The provisions of clauses 4 (*Nature of Security*) to 21 (*Miscellaneous*) (inclusive) of the Original Share Charge apply to this Deed as though they were set out in full in this Deed except that references to "**this Deed**" in the Original Share Charge are to be construed as references to this Deed, other than in relation to clause 5.2 (*Notices*) of the Original Share Charge which shall only apply to the extent that such notices of assignment have not been served on the relevant counterparties pursuant to the Original Share Charge and clause 7.2(b) (*General undertakings*) of the Original Share Charge which shall only require the delivery of the documents referred to therein to the extent that they have not already been delivered pursuant to the Original Share Charge.

5. **Continuation**

- 5.1 Except insofar as supplemented hereby the Original Share Charge remains in full force and effect.
- 5.2 The Chargor agrees that the execution of this Deed shall in no way prejudice or affect the security granted by it (or the covenants given by it) under the Original Share Charge.
- 5.3 References in the Original Share Charge to "**this Deed**" and expressions of similar import shall be deemed to be references to the Original Share Charge as supplemented by this Deed.
- 5.4 The Security created by this Deed is to be in addition to and shall neither be merged with nor in any way exclude or prejudice or be affected by any other Security or other right which the Security Agent may now or after the date of this Deed hold for any of the Secured Liabilities, and this Deed may be enforced against the Chargor without first having recourse to any other rights of the Security Agent.

6. **Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

7. **Jurisdiction**

- 7.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a **"Dispute"**).
- 7.2 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.
- 7.3 This clause is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

In witness this Deed is executed on the date appearing at the head of page 1.

Schedule 1

Shares

Number and class of shares	Details of nominees (if any) holding legal title to shares
1,000,000 ordinary shares of £1.00 each in the capital of Simplicity Marketing Limited	N/A
13,347,108 Ordinary Shares of £0.00001 each in the capital of Simplicity Marketing Limited	N/A

Signatories to this Deed

Chargor

Executed as a Deed by
Flash Bidco Limited
acting by John Nardone
in the presence of:

Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness

PETER MARLEY
58 MARICE AVE W. WESTPORT, CT 06880
CFO

Address: Suite 1, 3rd Floor 11-12 St. James's Square, London, United Kingdom, SW1Y 4LB

Security Agent

Signed by _____
authorised signatory
for and on behalf of
Silicon Valley Bank

Notice Details

Address: Alphabeta, 14-18 Finsbury Square, London EC2A 1BR
Facsimile: +44 (0) 207 600 9556
Email: jwatts2@svb.com
Attention: Mr. Jim Watts

Signatories to this Deed

Chargor

Executed as a Deed by
Flash Bidco Limited
acting by _____
in the presence of:

Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: Suite 1, 3rd Floor 11-12 St. James's Square, London, United Kingdom, SW1Y 4LB

Security Agent

Signed by _____
authorised signatory
for and on behalf of
Silicon Valley Bank

Andy De Vaux

Notice Details

Address: Alphabeta, 14-18 Finsbury Square, London EC2A 1BR
Facsimile: +44 (0) 207 600 9556
Email: jwatts2@svb.com
Attention: Mr. Jim Watts