



**Registration of a Charge**

Company name: **FRONERI INTERNATIONAL LIMITED**

Company number: **05777981**



X95KGZ17

Received for Electronic Filing: **22/05/2020**

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**Details of Charge**

Date of creation: **20/05/2020**

Charge code: **0577 7981 0024**

Persons entitled: **CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, 11 MADISON AVENUE, NEW YORK, NY 10010 UNITED STATES AS SECURITY AGENT (AS TRUSTEE FOR EACH OF THE SECURED PARTIES)**

Brief description: **N/A**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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:

**CLIFFORD CHANCE LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 5777981

Charge code: 0577 7981 0024

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th May 2020 and created by FRONERI INTERNATIONAL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd May 2020 .

Given at Companies House, Cardiff on 26th May 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**

EXECUTION VERSION

DATED 20 May 2020

FRONERI INTERNATIONAL LIMITED  
AS THE COMPANY

IN FAVOUR OF

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH  
AS THE SECURITY AGENT

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SECURITY OVER SHARES

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THIS AGREEMENT is made by way of deed on 20 May 2020

BY:

- (1) FRONERI INTERNATIONAL LIMITED, registered in England and Wales with company registration number 05777981 (the "Company"); in favour of
- (2) CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH as trustee for each of the Secured Parties under and as defined in the Intercreditor Agreement (the "Security Agent").

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

"Charged Assets" means the Shares and all dividend, interest and other monies payable in respect of those Shares and all Related Rights (whether derived by way of redemption, bonus, preference, options, substation, conversion, compensation or otherwise).

"Charged Entity" means any entity whose Shares are subject to Clause 4 (*Fixed charge over Shares*);

"Collateral Rights" means all rights, powers and remedies of the Security Agent provided by or pursuant to this Agreement or by law.

"Debtor" has the meaning given to that term in the Intercreditor Agreement.

"Enforcement Event" means a Senior Acceleration Event, a Super Senior Acceleration Event, a Cash Management Facility Acceleration Event, a Senior Secured Notes Acceleration Event, a Second Lien Lender Acceleration Event or a Second Lien Notes Acceleration Event.

"Event of Default" means any Cash Management Facility Event of Default, Second Lien Event of Default, Senior Event of Default or Senior Secured Notes Event of Default, as the context requires, and each as defined in the Intercreditor Agreement.

"Final Discharge Date" has the meaning given to that term in the Intercreditor Agreement.

"Group" has the meaning given to that term in the Intercreditor Agreement.

"Intercreditor Agreement" means the intercreditor agreement dated 29 January 2020 between, among others, Froneri International Limited as company, Froneri Limited as original topco and the original subordinated creditor, Credit Suisse AG, Cayman Islands Branch as senior agent and second lien agent, the Security Agent, the financial institutions named therein as the original senior lenders and the financial institutions named therein as the original second lien lenders.

**"Party"** means a party to this Agreement.

**"Receiver"** means a receiver, receiver and manager or, where permitted by law, an administrative receiver and that term will include any appointee made under a joint or several appointment.

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

- (a) the proceeds of sale or rental of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset.

**"Relevant Payments"** means each and every sum paid or payable from time to time to the Company pursuant to the Subordinated Documents.

**"Second Lien Facility Agreement"** means the second lien facility agreement dated 29 January 2020 between, among others, Froneri International Limited as company, Credit Suisse International, Credit Suisse Loan Funding LLC, Deutsche Bank AG, London Branch, Goldman Sachs International, Citigroup Global Markets Limited, HSBC Bank plc, J.P. Morgan Securities plc and Bank of America Merrill Lynch International Designated Activity Company as arrangers, Credit Suisse AG, Cayman Islands Branch as agent, the Security Agent and the financial institutions named therein as the original lenders.

**"Secured Debt Documents"** has the meaning given to that term in the Intercreditor Agreement.

**"Secured Debt Financing Agreement"** has the meaning given to that term in paragraph (a) of Clause 1.2 (*Terms defined in other Secured Debt Documents*).

**"Secured Obligations"** means all Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group and by each Debtor and any Third Party Security Provider to any Secured Party (other than a Topco Creditor) under the Secured Debt Documents (other than the Topco Finance Documents) including to the Security Agent under the Parallel Debt pursuant to clause 19.5 (*Parallel Debt (Covenant to Pay the Security Agent)*) of the Intercreditor Agreement, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity, provided that the Secured Obligations shall exclude all Excluded Swap Obligations (as defined in the Intercreditor Agreement).

**"Secured Parties"** has the meaning given to that term in the Intercreditor Agreement.

**"Senior Facilities Agreement"** means the senior facilities agreement dated 29 January 2020 between, among others, Froneri International Limited as company, Credit Suisse International, Credit Suisse Loan Funding LLC, Deutsche Bank AG, London Branch,

Goldman Sachs International, Citigroup Global Markets Limited, HSBC Bank plc, J.P. Morgan Securities plc and Bank of America Merrill Lynch International Designated Activity Company as arrangers, Credit Suisse AG, Cayman Islands Branch as agent, the Security Agent and the financial institutions named therein as the original lenders.

"**Shares**" means any stocks, shares and other securities listed in Schedule 1 (*Shares*) and all of the Company's present and future shares in the capital of R&R Ice Cream UK Limited (registered in England and Wales with number 00901522) from time to time held by, to the order, or on behalf, of the Company.

## 1.2 Terms defined in other Secured Debt Documents

- (a) Unless defined in this Agreement or the context otherwise requires, a term defined in the Senior Facilities Agreement, the Second Lien Facility Agreement or in any other Debt Document (as defined in the Intercreditor Agreement) which is a Secured Debt Document (a "**Secured Debt Financing Agreement**") has the same meaning in this Agreement or any notice given under or in connection with this Agreement.
- (b) This Agreement is subject to the Intercreditor Agreement. In the event of any inconsistency between this Agreement and the Senior Facilities Agreement, the Second Lien Facility Agreement and/or the Intercreditor Agreement, the Intercreditor Agreement shall prevail and the Security Agent shall, upon the request of (and at the cost of) the Company, promptly enter into such amendments, waivers or consents as are necessary to remove such conflict.

## 1.3 Construction

In this Agreement:

- (a) the rules of construction contained in clause 1.2 (*Construction*) of the Intercreditor Agreement shall apply to the construction of this Agreement, or in any notice given under or in connection with this Agreement, *mutatis mutandis*;
- (b) any reference to the "**Security Agent**", the "**Secured Parties**", a "**Company**" or any "**Debtor**" shall be construed so as to include its or their (and any subsequent) successors in title, permitted assigns and permitted transferees in accordance with their respective interests and, in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Intercreditor Agreement;
- (c) any Secured Debt Document or other agreement or instrument (including to the extent referenced in any other definition referred to herein) is to be construed as a reference to that agreement or instrument as amended (howsoever fundamentally and whether or not such amendments result in new and/or more onerous obligations and liabilities) or novated, including by way of change in the purpose of the facilities or increase of the facilities or other obligations or addition of new facilities or other obligations made available under them or accession or retirement of the parties to these agreements; and



- (d) references in this Agreement to any Clause or Schedule shall be to a Clause or Schedule contained in this Agreement.

#### 1.4 Incorporation of provisions from Intercreditor Agreement

Clause 1.4 (*Third Party Rights*) and clause 25 (*Notices*) of the Intercreditor Agreement are deemed to form part of this Agreement as if expressly incorporated into it and as if all references in those clauses to the Intercreditor Agreement were references to this Agreement.

#### 1.5 Present and future assets

- (a) A reference in this Agreement to any Charged Asset or other asset includes, unless the contrary intention appears, present and future Charged Assets and other assets.
- (b) The absence of or incomplete details of any Charged Assets in any Schedule shall not affect the validity or enforceability of any Security under this Agreement.

#### 1.6 Security Agent assumes no obligation

The Security Agent shall not be under any obligation in relation to the Charged Assets as a consequence of this Agreement and the Company shall at all times remain liable to perform all obligations in respect of the Charged Assets.

#### 1.7 Nature of obligations

Nothing in this Agreement is intended to make the Company liable, as principal debtor, guarantor or otherwise, for any of the Secured Obligations.

### 2. COVENANT TO PAY

The Company covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it shall, on demand of the Security Agent pay, discharge and satisfy the Secured Obligations in accordance with the terms of the Secured Debt Documents.

### 3. COMMON PROVISIONS

All the Security created by or pursuant to this Agreement is:

- (a) created with full title guarantee **provided that** the covenant set out in section 3 Law of Property (*Miscellaneous Provisions*) Act 1994 shall not extend to the Security;
- (b) created in favour of the Security Agent as trustee for the Secured Parties and the Security Agent shall hold the benefit of this Agreement and the Security created by or pursuant to it on trust for the Secured Parties; and
- (c) continuing security for the payment and discharge of all the Secured Obligations.

#### 4. **FIXED CHARGE OVER SHARES**

The Company charges, by way of first fixed charge, all of its rights, title and interest from time to time in and to the Shares and all dividends, interest and other monies payable in respect of those Shares and all Related Rights (whether derived by way of redemption, bonus, preference, options, substitution, conversion, compensation or otherwise).

#### 5. **PROVISIONS AS TO SECURITY AND PERFECTION**

##### 5.1 **Negative pledge and restrictions on dealings**

Except for as permitted or not prohibited under each of the Secured Debt Financing Agreements and construed as if the Company were a member of the Group *mutatis mutandis*, the Company shall not at any time prior to the Final Discharge Date create or permit to subsist any Security over all or any part of the Charged Assets.

##### 5.2 **No implied covenants for title**

The covenants set out in sections 3(1) and 3(2) of the Law of Property (*Miscellaneous Provisions*) Act 1994 will not extend to Clause 4 (*Fixed charge over Shares*).

##### 5.3 **Deposit of share certificates**

The Company shall:

- (a) as soon as reasonably practicable after the date of this Agreement (and as soon as reasonably practicable following its coming into possession thereof) and, in any event, within 10 Business Days of the date of this Agreement, deposit with the Security Agent (or procure the deposit of) all certificates or other documents of title to the Shares, and stock transfer forms (executed in blank by it or on its behalf) in respect of the Shares; and
- (b) as soon as reasonably practicable upon the accrual, offer or issue of any stocks, shares, warrants or other securities in respect of or derived from the Shares (or upon acquiring any interest therein) and, in any event, within 10 Business Days of the accrual, offer, issue or acquisition thereof, deposit with the Security Agent (or procure the deposit of) (i) all certificates or other documents of title representing such assets and (ii) such stock transfer forms or other instruments of transfer (executed in blank by it or on its behalf) in respect thereof as the Security Agent may request (acting reasonably), **provided that** if any stock and share certificates and other documents of title to the Shares or stock transfer forms have been sent to HM Revenue and Customs or any other regulatory or government body then the Company shall deposit with the Security Agent (or procure the deposit of) such certificates, other documents of title or stock transfer forms (executed in blank by it or on its behalf) as soon as reasonably practicable but, in any event, within 10 Business Days, following their return to the Company by HM Revenue and Customs or such other regulatory or government body.

#### 5.4 Further advances

Subject to the terms of the Secured Debt Documents, the Secured Parties may be under an obligation to make further advances to the Debtors and that obligation will be deemed to be incorporated in this Agreement as if set out in this Agreement.

#### 5.5 Property Restricting Charging

- (a) There shall be excluded from the security created by Clause 4 (*Fixed charge over Shares*) and from the operation of Clause 5.3 (*Deposit of share certificates*) and Clause 6 (*Further Assurance*):
  - (i) any assets in which the Company has an interest in respect of which the Company is either absolutely or conditionally (including requiring the consent of any third party) prohibited from creating any charge over its interest in the relevant asset in each case until the relevant condition or waiver has been satisfied or obtained;
  - (ii) any asset or undertaking which, if subject to any such Security, would give a third party the right to terminate or otherwise amend any rights, benefits and/or obligations of the Company in respect of that asset or undertaking or require the Company to take any action materially adverse to the commercial interests of the Group or any member thereof; and
  - (iii) any asset or undertaking to the extent that the granting of such Security is not within the legal capacity of the Company or would conflict with the fiduciary duties of the directors (or other officers) of the Company or contravene any legal prohibition or have the potential to result in a material risk of personal or criminal liability on the part of any director (or other officer) of the Company.
- (b) For all material assets referred to in paragraph (a)(i) – (ii) above, the Company shall, if requested to do so by the Security Agent, use reasonable endeavours to obtain the relevant consent or waiver of prohibition or condition within 20 Business Days of the date of this Agreement. If such consent has not been given within 20 Business Days then the Company's obligation to obtain such consent shall cease on the expiry of that 20 Business Day period.
- (c) For all assets referred to in paragraph (a)(iii) above, the Company shall use reasonable endeavours to overcome any such obstacle in connection with the legal capacity of the Company or any conflict with the fiduciary duties of the directors (or other officers) of the Company or any contravention of any legal prohibition or any material risk of personal or criminal liability on the part of any director (or other officer) of the Company.
- (d) Notwithstanding paragraph (b) above, the Company shall not be required to seek consent if it could or is reasonably expected to materially adversely affect the commercial reputation or interest of the Company, or if taking such actions would place commercial relationships with third parties in jeopardy or its ability

to conduct its operations and business in the ordinary course as otherwise permitted or not prohibited by each of the Secured Debt Financing Agreements.

- (e) Immediately upon receipt of the relevant waiver or consent, the formerly excluded assets shall stand charged to the Security Agent under Clause 4 (*Fixed charge over Shares*).

#### 5.6 Effect of creating security

Notwithstanding anything to the contrary in this Agreement but without prejudice to the creation or perfection of any security interest under this Agreement, the terms of this Agreement shall not operate or be construed so as to prohibit or restrict any transaction, matter or other step (or the Company taking or entering into the same or dealing in any manner whatsoever in relation to any asset (including all rights, claims, benefits, proceeds and documentation, and contractual counterparties in relation thereto)) not prohibited by the Debt Documents (other than this Agreement), and the Security Agent shall promptly enter into such documentation and/or take such other action in relation to this Agreement (at the cost and expense of the Company) as is required by the Company (acting reasonably) in order to facilitate any such transaction, matter or other step, including, but not limited to, by way of executing any confirmation, consent to dealing, release or other similar or equivalent document.

#### 5.7 Non-perfection

Without limiting Clause 6 (*Further Assurance*), save for the delivery of the relevant notices in accordance with Clause 5.3 (*Deposit of Share Certificates*), nothing in this Agreement shall require the Company, prior to the occurrence of an Enforcement Event which is continuing, to take any steps to perfect and/or protect any Security created or intended to be created in respect of the Charged Assets.

### 6. FURTHER ASSURANCE

- (a) Subject to the Agreed Security Principles, the Company shall at its own expense promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
  - (i) to perfect the Security created or intended to be created under or evidenced by this Agreement (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this Agreement) or for the exercise of any rights, powers and remedies of the Security Agent or the Secured Parties provided by or pursuant to the Secured Debt Documents or by law; and/or
  - (ii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created or expressed to be created in favour of the Security Agent or Secured Parties by or pursuant to this Agreement.

- (b) Subject to the Agreed Security Principles, the Company shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to this Agreement.

## **7. SHARES**

### **7.1 Shares: Representation and Undertaking**

- (a) As at the date of this Agreement, the shares of the Charged Entity are fully paid and not subject to any option to purchase or similar rights (other than, those arising under applicable law and except as set out in this deed or relevant constitutional documents).
- (b) As at the date of this Agreement, no "warning notice" or "restrictions notice" (in each case as defined in paragraph 1(2) of Schedule 1B of Part 21A of the Companies Act 2006) has been issued to the Company in respect of all or any part of the Shares and remains in effect.
- (c) The Company shall:
  - (i) comply with any notice served on it by the Charged Entity pursuant to Part 21A of the Companies Act 2006 and within the timeframe specified in the notice; and
  - (ii) provide the Security Agent with a copy of any "warning notice" or "restrictions notice" (in each case as defined in paragraph 1(2) of Schedule 1B of Part 21A of the Companies Act 2006) served on it by its Charged Entity promptly following receipt of such notice.

### **7.2 Dividends prior to an Enforcement Event**

Prior to the occurrence of an Enforcement Event, the Company shall be entitled to receive all dividends, interest and other monies arising from the Shares.

### **7.3 Dividends after an Enforcement Event**

Upon the occurrence of an Enforcement Event which is continuing, the Security Agent may, at its discretion, in the name of the Company or otherwise and without any further consent or authority from the relevant Company, apply all dividends, interest and other monies arising from the Shares as though they were the proceeds of sale in accordance with Clause 12 (*Application of Proceeds*).

### **7.4 Voting rights prior to Security Agent Notice**

Prior to the giving of notice pursuant to Clause 7.5 (*Voting rights after Security Agent Notice*), the Company shall be entitled to exercise all voting rights in relation to the Shares.

## 7.5 Voting rights after Security Agent Notice

- (a) Subject to Clause 7.6 (*Waiver of voting rights by Security Agent*), upon the occurrence of an Enforcement Event which is continuing, the Security Agent may (but without having any obligation to do so) give notice to the relevant Company (with a copy to the Agent) that this Clause 7.5 will apply. With effect from the giving of that notice, the Security Agent may, at its discretion, in the name of the relevant Company or otherwise and without any further consent or authority from the relevant Company:
  - (i) exercise (or refrain from exercising) any voting rights in respect of the Shares; and
  - (ii) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Shares including the right, in relation to any company whose shares or other securities are included in the Shares, to concur or participate in:
    - (A) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
    - (B) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
    - (C) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,

in each case, in the manner and on the terms the Security Agent thinks fit, and the proceeds of any such action shall form part of the Shares.
- (b) Notwithstanding paragraph (a) above, paragraph (i) of clause 19.7 (*Instructions to Security Agent and Exercise of Discretion*) of the Intercreditor Agreement shall apply to all voting rights in relation to the Shares after a notice has been given by the Security Agent under this Clause 7.5.

## 7.6 Waiver of voting rights by Security Agent

- (a) The Security Agent may, in its absolute discretion and without any consent or authority from the other Secured Parties or the relevant Company, at any time, by notice to the relevant Company (which notice shall be irrevocable), with a copy to the Agent, elect to give up the right to exercise (or refrain from exercising) all voting rights and powers in respect of the Shares conferred or to be conferred on the Security Agent pursuant to Clause 7.5 (*Voting rights after Security Agent Notice*) and the other Secured Parties unconditionally waive any rights they may otherwise have to require the Security Agent not to make such election or to require the Security Agent to indemnify, compensate or otherwise make good for any losses, costs or liabilities incurred by any of them in relation to or as a consequence of the Security Agent making such election.

- (b) Once a notice has been issued by the Security Agent under paragraph (a) of this Clause 7.6, on and from the date of such notice the Security Agent shall cease to have the rights to exercise or refrain from exercising voting rights and powers in respect of the Shares conferred or to be conferred on it pursuant to Clause 7.5 (*Voting rights after Security Agent Notice*) or any other provision of this Agreement and all such rights will be exercisable by the relevant Company. The Company shall be entitled, on and from the date of such notice, to exercise all voting rights and powers in relation to the Shares.

## **8. ENFORCEMENT OF SECURITY**

### **8.1 Enforcement**

Any time after the occurrence of:

- (a) an Enforcement Event which is continuing; or
- (b) a request from the Company to the Security Agent that it exercise any of its powers of enforcement under this Agreement,

the Security created by or pursuant to this Agreement is immediately enforceable and the Security Agent may, without notice to the Company or prior authorisation from any court, in its absolute discretion:

- (i) enforce all or any part of that Security (at the times, in the manner and on the terms it thinks fit and dispose of all or any part of the Charged Assets, in each case, in accordance with the terms of the Intercreditor Agreement); and
- (ii) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Agreement) on mortgagees and by this Agreement on any Receiver or otherwise conferred by law on mortgagees or Receivers.

### **8.2 Effect of moratorium**

The Security Agent shall not be entitled to exercise its rights under Clause 8.1 (*Enforcement*) where the right arises as a result of an Event of Default occurring solely due to any person obtaining, or taking steps to obtain, a moratorium pursuant to Schedule A1 of the Insolvency Act 1986.

## **9. EXTENSION OF POWERS AND RIGHT OF APPROPRIATION**

### **9.1 Extension of powers**

The power of sale or other disposal conferred on the Security Agent and on any Receiver by this Agreement shall operate as a variation and extension of the statutory power of sale under section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Agreement.

## 9.2 Restrictions

The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to the exercise by the Security Agent of its right to consolidate all or any of the Security created by or pursuant to this Agreement with any other Security in existence at any time or to its power of sale, which powers may be exercised by the Security Agent without notice to the Company on or at any time after the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8.1 (*Enforcement*).

## 9.3 Right of appropriation

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8.1 (*Enforcement*) to the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended, (the "**Regulations**") apply to the Charged Assets, the Security Agent shall have the right to appropriate all or any part of the Charged Assets in or towards the payment or discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Company. For this purpose, the parties agree that the value of the Charged Assets shall be the market value of such Shares determined by the Security Agent by reference to a public index or independent valuation, or by such other process as the Security Agent may select, subject to the terms of the Intercreditor Agreement.

In each case, the parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## 10. APPOINTMENT OF RECEIVER

### 10.1 Appointment and removal

- (a) After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8.1 (*Enforcement*), the Security Agent may by deed or otherwise (acting through an authorised officer of the Security Agent) without prior notice to the Company:
  - (i) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets; or
  - (ii) appoint two or more Receivers of separate parts of the Charged Assets; or
  - (iii) remove (so far as it is lawfully able) any Receiver so appointed; or
  - (iv) appoint another person(s) as an additional or replacement Receiver(s).
- (b) No Secured Party will incur any liability (either to the Company or to any other person) by reason of the appointment of a Receiver or for any acts, defaults or liabilities of the Receiver.



## 10.2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to Clause 10.1 (*Appointment and removal*) shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;
- (b) for all purposes deemed to be the agent of the Company which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Agent; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Security Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

## 10.3 Statutory powers of appointment

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Agent under the Law of Property Act 1925 (as extended by this Agreement) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of any part of the Charged Assets.

## 11. POWERS OF RECEIVERS

Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of the Company) have and be entitled to exercise, in relation to the Charged Assets (and any assets of the Company which, when got in, would be Charged Assets) in respect of which he was appointed, and as varied and extended by the provisions of this Agreement (in the name of or on behalf of the Company or in his own name and, in each case, at the cost of the Company):

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (c) all the powers and rights of an absolute owner and power to do or omit to do anything which the Company itself could do or omit to do in relation to the Charged Assets; and
- (d) the power to do all things (including bringing or defending proceedings in the name or on behalf of the Company) which seem to the Receiver to be incidental or conducive to:
  - (i) any of the functions, powers, authorities or discretions conferred on or vested in him;
  - (ii) the exercise of the Collateral Rights (including realisation of all or any part of the assets in respect of which that Receiver was appointed); or

- (iii) bringing to his hands any assets of the Company forming part of, or which when got in would be, Charged Assets.

## **12. APPLICATION OF PROCEEDS**

All monies received or recovered and any non-cash recoveries made or received by the Security Agent or any Receiver pursuant to this Agreement or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied by the Security Agent in accordance with the terms of clause 16 (*Application of Proceeds*) of the Intercreditor Agreement.

## **13. PROTECTION OF PURCHASERS**

### **13.1 Consideration**

The receipt of the Security Agent or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making any acquisition, the Security Agent or any Receiver may do so for such consideration (whether cash or non-cash), in such manner and on such terms as it thinks fit, in accordance with the terms of the Intercreditor Agreement.

### **13.2 Protection of purchasers**

No purchaser or other person dealing with the Security Agent or any Receiver shall be bound to inquire whether the right of the Security Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Agent or such Receiver in such dealings.

## **14. POWER OF ATTORNEY**

### **14.1 Appointment and powers**

Subject to Clause 14.2 (*Use of Powers*) below, the Company by way of security irrevocably appoints the Security Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all other documents and do all things which the attorney may reasonably consider to be required for:

- (a) carrying out any obligation imposed on the Company by this Agreement (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Assets and perfecting and/or releasing the Security created or intended to be created in respect of the Charged Assets); and
- (b) enabling the Security Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Agreement or by law (including, on or after the date upon which this Agreement has become enforceable in accordance with Clause 8.1 (*Enforcement*), the exercise of any right of a legal or beneficial owner of the Charged Assets).

#### **14.2 Use of powers**

The Security Agent and any Receiver shall only be able to exercise a power of attorney under this Agreement upon the occurrence of an Enforcement Event that is continuing.

#### **14.3 Ratification**

The Company shall ratify and confirm all things done and all documents executed by any attorney in the proper exercise of all or any of his powers.

### **15. EFFECTIVENESS OF SECURITY**

#### **15.1 Continuing security**

- (a) The Security created by or pursuant to this Agreement shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Agent in writing.
- (b) No part of the Security from time to time intended to be created by this Agreement will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

#### **15.2 Cumulative rights**

The Security created by or pursuant to this Agreement, and the Collateral Rights, shall be cumulative, in addition to and independent of every other Security which the Security Agent or any other Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Charged Assets shall merge into the Security created by this Agreement.

#### **15.3 No prejudice**

The Security created by or pursuant to this Agreement, and the Collateral Rights, shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Company or any other person, or the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Security Agent holds the Security or by any other thing which might otherwise prejudice that Security or any Collateral Right.

#### **15.4 Remedies and waivers**

No failure on the part of the Security Agent to exercise, nor any delay on its part in exercising, any Collateral Right, shall operate as a waiver of that Collateral Right or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of the Security Agent shall be effective unless it is in writing. No single or

partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

#### **15.5 No liability**

None of the Security Agent, its nominee(s) or any Receiver shall be liable to account as a mortgagee or mortgagee in possession, except in the case of gross negligence or wilful default upon its part and subject to the provisions of clause 19.14 (*Exclusion of Liability*) of the Intercreditor Agreement.

#### **15.6 Partial invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

#### **15.7 Waiver of defences**

The obligations assumed, and the Security created, by the Company under this Agreement, and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 15.7, would reduce, release or prejudice any of its obligations under, or the Security created by, this Agreement (without limitation and whether or not known to the Company or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any other Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any Debtor 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, any Debtor or any other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatever nature, and whether or not more onerous) or replacement of a Secured Debt Document or any other document or Security or of the Secured Obligations including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Secured Debt Document or other document of Security;

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Secured Debt Document or any other document or Security or of the Secured Obligations; and
- (g) any insolvency or similar proceedings.

#### **15.8 Company intent**

Without prejudice to the generality of Clause 15.7 (*Waiver of Defences*), the Company expressly confirms that it intends that the Security created under this Agreement, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Secured Debt Documents and/or any facility or amount made available under any of the Secured Debt Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **15.9 Immediate recourse**

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

#### **15.10 Deferral of rights**

Until the Final Discharge Date, the Company will not exercise any rights which it may have by reason of performance by it of its obligations under this Agreement:

- (a) to be indemnified by a Debtor or in respect of any other person;
- (b) to claim any contribution from any guarantor or any other person in respect of any Debtor's obligations under this Agreement;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under this Agreement or of any other guarantee or Security taken pursuant to, or in connection with, this Agreement by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Debtor or other person to make any payment, or perform any obligation, in respect of which any Debtor or any other person has given a guarantee, undertaking or indemnity under any Secured Debt Document;
- (e) to exercise any right of set-off against any Debtor or other person; and/or

- (f) to claim or prove as a creditor of any Debtor or other person in competition with any Secured Party.

If the Company receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution on trust for the Secured Parties to the extent necessary to enable all amounts which may be or become payable to any Secured Party by the Debtors under or in connection with this Agreement to be repaid in full and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 12 (*Application of Proceeds*).

#### **15.11 Additional Security**

The Security created by the Company under this Agreement and the Collateral Rights are in addition to and are not in any way prejudiced by any other guarantee or Security now or subsequently held by any Secured Party.

#### **16. PRIOR SECURITY INTERESTS**

- (a) In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any of the Charged Assets or in case of exercise by the Security Agent or any Receiver of any power of sale under this Agreement, the Security Agent may redeem such prior Security or procure the transfer thereof to itself.
- (b) If otherwise entitled to do so under this Agreement, the Security Agent may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on the Company.
- (c) All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Company to the Security Agent on demand together with accrued interest thereon calculated in accordance with clause 22.4 (*Interest on demand*) of the Intercreditor Agreement.

#### **17. SUBSEQUENT SECURITY INTERESTS**

If the Security Agent (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting all or any part of the Charged Assets which is prohibited by the terms of any Secured Debt Document, all payments thereafter made by or on behalf of the Company to the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties will (in the absence of any express contrary appropriation by the Company) be treated as having been credited to a new account of the Company and not as having been applied in reduction of the Secured Obligations at the time that notice was received.

#### **18. SUSPENSE ACCOUNTS**

- (a) All monies received, recovered or realised by the Security Agent under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial

institution or other person which the Security Agent considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Security Agent's discretion, in or towards the discharge of any of the Secured Obligations, **provided that** as soon as the Security Agent has received the full amount of all monies owed to them under this Agreement, all funds standing to the credit of such suspense or impersonal account(s) must be immediately applied towards the discharge of the Secured Obligations.

- (b) Save as provided herein, no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

## **19. RELEASE OF SECURITY**

- (a) Subject to paragraph (b) below, on the Final Discharge Date, the Security Agent shall, at the request and cost of the Company:
  - (i) promptly take any and all action which the Company reasonably requests and/or which may be necessary to release, reassign or discharge (as appropriate) the Charged Assets from the Security constituted by this Agreement; and
  - (ii) promptly take all other actions and steps contemplated by the Intercreditor Agreement in relation to the release of any Security contemplated by this Agreement, or any other steps, confirmations or actions in relation to this Agreement.
- (b) Notwithstanding anything to the contrary in this Agreement, to the extent not prohibited under the Secured Debt Financing Agreements (or to the extent agreed between the Security Agent and the Company), the Security Agent shall, at the request and cost of the Company, take any and all action which is necessary to release such assets from the Security constituted by this Agreement in accordance with the terms of the Intercreditor Agreement.

## **20. ASSIGNMENT & CHANGES TO THE PARTIES**

### **20.1 No assignments or transfers by Company**

The Company may not assign any of its rights or transfer any of its rights or obligations under this Agreement.

### **20.2 Assignments and transfers by the Security Agent**

The Security Agent may assign and transfer all or any of its rights and obligations under this Agreement in accordance with the terms of the Intercreditor Agreement. The Security Agent shall be entitled to disclose such information concerning the Company and this Agreement as the Security Agent considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

### 20.3 Successors

This Agreement shall remain in effect despite any amalgamation or merger (however effected) relating to the Security Agent. References to the Security Agent shall include (i) any assignee or successor in title of the Security Agent, (ii) any entity into which the Security Agent is merged or converted or with which it may be consolidated, (iii) any legal entity resulting from any merger, conversion or consolidation to which such Security Agent is a party and (iv) any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Security Agent under this Agreement or to which, under such laws, those rights and obligations have been transferred (such person described in (i) to (iv) being a successor to the Security Agent for all purposes under the Secured Debt Documents).

### 21. DISCRETION

Any liberty or power which may be exercised or any determination which may be made under this Agreement by the Security Agent or any Receiver may, subject to the terms and conditions of the Intercreditor Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons, **provided that** this Clause 21 shall be without prejudice to clause 19.8 (*Instructions to Security Agent and exercise of discretion*) of the Intercreditor Agreement.

### 22. COUNTERPARTS

This Agreement 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 Agreement.

### 23. GOVERNING LAW

This Agreement (including any non-contractual obligations arising out of or in relation to this Agreement) and any dispute or proceeding arising out of or relating to this Agreement shall be governed by English law.

### 24. JURISDICTION

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) or any non-contractual obligation arising out of or in connection with this Agreement (a "Dispute").
- (b) 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.

**THIS AGREEMENT** has been executed as, and is intended to take effect as, a deed by the Company and has been signed by the Security Agent.



**SCHEDULE 1  
SHARES**

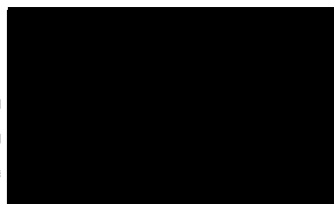
<b>Name of company issuing shares</b>	<b>Issued Share Capital</b>	<b>Description and Number of Shares Held</b>
R&R Ice Cream UK Limited	£39,000	35,929 ordinary shares of £0.10 each fully paid  35,000 deferred shares of £1.00 each fully paid

**EXECUTION PAGE TO AGREEMENT**

**The Company**

**EXECUTED AS A DEED** by  
**FRONERI INTERNATIONAL LIMITED**  
acting by a director  
in the presence of:

)  
)  
)  
)

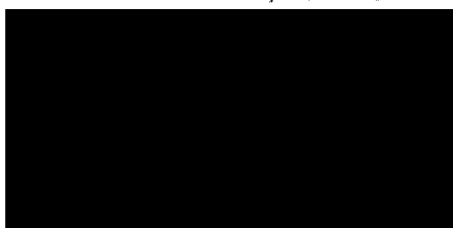


Signature of witness:



Name (in BLOCK CAPITALS): LAURA TSANGLI

Address:



**The Security Agent**

Signed by )  
**CREDIT SUISSE AG, CAYMAN ISLANDS** )  
**BRANCH** )  
for and on its behalf )  
by its duly authorised )  
officer )



Signed by )  
**CREDIT SUISSE AG, CAYMAN ISLANDS** )  
**BRANCH** )  
for and on its behalf )  
by its duly authorised )  
officer )

