



Registration of a Charge

Company Name: **GRILLBURGER FROZEN FOODS LIMITED**

Company Number: **SC050570**



Received for filing in Electronic Format on the: **05/07/2022**

XB7MQA7L

Details of Charge

Date of creation: **17/06/2022**

Charge code: **SC05 0570 0012**

Persons entitled: **SME PLATFORM UK LENDING NO.1 DAC**

Brief description:

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: **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: **KIRSTY WATSON, SOLICITOR, HARPER MACLEOD LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 50570

Charge code: SC05 0570 0012

The Registrar of Companies for Scotland hereby certifies that a charge dated 17th June 2022 and created by GRILLBURGER FROZEN FOODS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th July 2022 .

Given at Companies House, Edinburgh on 6th July 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**



Harper
Macleod LLP

Floating Charge

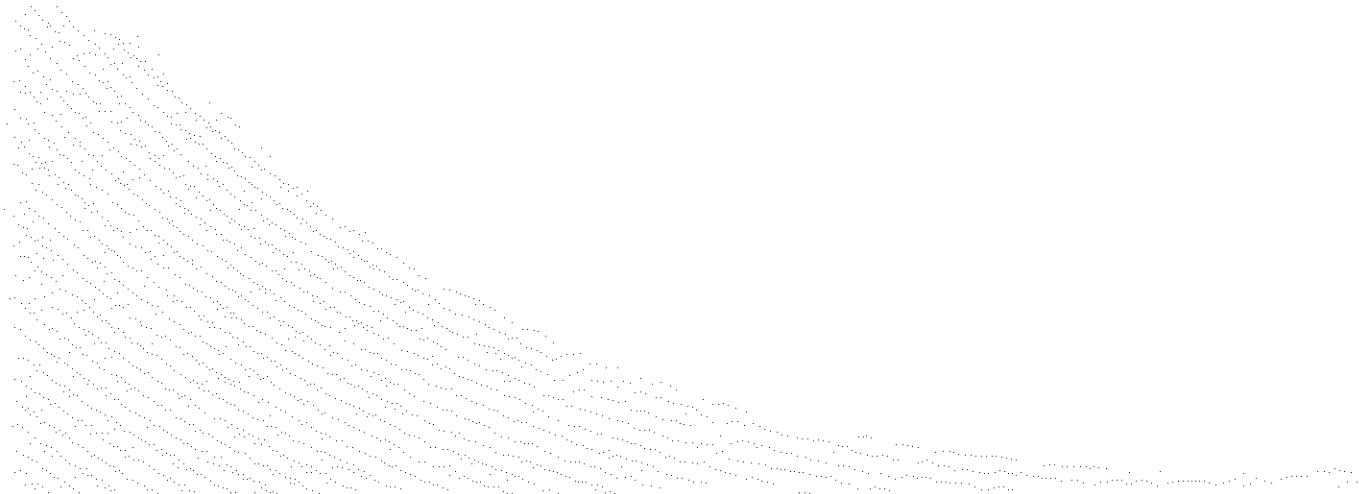
By

Grillburger Frozen Foods Limited

in favour of

SME Platform UK Lending No.1 DAC

Ref:



Contents

1	Definitions and Interpretation	1
2	Covenant to Pay	4
3	Grant of Security	4
4	Liability of Borrower	5
5	Representations and Warranties	6
6	Ownership of Secured Assets	6
7	Covenants	9
8	Powers of the Lender	17
9	Event of Default	18
10	Enforcement	19
11	Receiver	21
12	Receiver's Powers	22
13	Application of Proceeds	25
14	Appropriation	25
15	Suspense Account	25
16	Costs and Indemnity	25
17	Further Assurance	26
18	Power of Attorney	26
19	Release	27
20	Assignment and Transfer	27
21	Set-Off	28
22	Amendments, Waivers and Consents	28
23	Rights and remedies	28
24	Third Party Rights	29
25	Further provisions	29
26	Notices	30
27	Governing Law and Jurisdiction	30

Floating Charge

By

Grillburger Frozen Foods Limited incorporated and registered in Scotland with company number SC050570 whose registered office is at 29 Inaclete Road, Stornoway, Isle of Lewis, HS1 2RB (the "**Borrower**");

in favour of

SME Platform UK Lending No.1 DAC incorporated and registered in Ireland with company number 638826 whose registered office is at Fourth Floor, 3 George's Dock, IFSC, Dublin 1, Dublin (the "**Lender**").

IT IS AGREED AS FOLLOWS:

1 Definitions and Interpretation

1.1 In this Instrument the definitions and rules of interpretation in this clause apply:

"Administrator" means an administrator appointed to manage the affairs, business and property of the Borrower pursuant to clause 8.7;

"Affiliate" means has the meaning ascribed to it in the Facility Agreement;

"Book Debts" means all present and future book and other debts and monetary claims due or owing to the Borrower, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Borrower in relation to any of them;

"Borrowed Money" means any indebtedness of the Borrower for or in respect of:

- (a) borrowing or raising money, including any premium and any capitalised interest on that money;
- (b) any bond, note, loan stock, deed, commercial paper or similar instrument;
- (c) any acceptances under any acceptance credit facility or dematerialised equivalent or bill discounting, note purchase or documentary credit facilities;
- (d) monies raised by selling, assigning or discounting receivables or financial assets on terms that recourse may be had to the Borrower if those receivables or financial assets are not paid when due;
- (e) any deferred payment for assets or services acquired, other than trade credit that is given in the ordinary course of trade and which does not involve any deferred payment of any amount for more than 60 days;
- (f) any rental or hire charges under any finance lease (whether for land, machinery, equipment or otherwise);
- (g) any counter-indemnity obligation in respect of any guarantee, bond, indemnity, standby letter of credit or other instrument issued by a third party in connection with the Borrower's performance of a contract;
- (h) any other transaction that has the commercial effect of borrowing (including any forward sale or purchase agreement and any liabilities that are not shown as borrowed money on the Borrower's balance sheet because they are contingent, conditional or otherwise);

- (i) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (And when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (j) any guarantee, counter-indemnity or other assurance against financial loss given by the Borrower for any Indebtedness of the type referred to in any other paragraph of this definition incurred by any person.

"Business Day" means a day other than a Saturday or a Sunday or public holiday in England or Scotland when banks in London and Edinburgh are open for business;

"Charged Property" means any freehold or leasehold property the subject of the security constituted by this Instrument and references to Charged Property shall include references to the whole or any part of it;

"Delegate" means any person appointed by the Lender or any Receiver pursuant to clause 13 and any person appointed as attorney of the Lender, Receiver or Delegate;

"Environment" means the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media;

"Environmental Law" means all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measure, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment;

"Environmental Licence" means any authorisation, permit or licence necessary under Environmental Law in respect of any of the Secured Assets;

"Equipment" means all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property owned by the Borrower or in which it has an interest, including any part of it and all spare parts, replacements, modifications and additions;

"Event Of Default" means any of the events set out in clause 9;

"Facility Agreement" means the facility agreement entered into between, amongst others, the Lender and the Borrower dated on or around the date of this Instrument;

"Finance Document" has the meaning given to such term in the Facility Agreement;

"Financial Collateral" means shall have the meaning given to that expression in the Financial Collateral Regulations;

"Financial Collateral Regulations" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003/3226);

"Indebtedness" means any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint and any guarantee or indemnity of any of those obligations;

"Instrument" means this floating charge;

"Intellectual Property" means the Borrower's present and future patents, rights to inventions, copyright and related rights, moral rights, trade marks, service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade

secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Investments" means all certificated shares, stock, deeds, bonds or other securities or investments (whether or not marketable) from time to time legally or beneficially owned by or on behalf of the Borrower;

"Material Adverse Effect" means has the meaning given to such term in the Facility Agreement;

"Permitted Security" has the meaning given to such term in the Facility Agreement;

"Receiver" means a receiver, receiver and manager or administrative receiver appointed by the Lender under clause 11;

"Secured Assets" means the whole of the property and assets of the Borrower (including, without limitation, uncalled capital) which is or may be from time to time while this Instrument is in force comprised in the property and undertaking of the Borrower (and references to the Secured Assets shall include references to any part of them);

"Secured Liabilities" means all present and future obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity and whether or not the Lender was an original party to the relevant transaction and in whatever name or style, together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities;

"Security" means any mortgage, standard security, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment, assignation by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect;

"Security Financial Collateral Arrangement" means shall have the meaning given to that expression in the Financial Collateral Regulations;

"Security Period" means the period starting on the date of this Instrument and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding; and

"VAT" means value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 In this Instrument:

1.2.1 any reference to any statute or statutory provision includes a reference to any subordinate legislation made under that statute or statutory provision, to any modification, re-enactment or extension of that statute or statutory provision and to any former statute or statutory provision which it consolidated or re-enacted before the date of this Instrument;

1.2.2 a reference to one gender includes a reference to the other gender;

1.2.3 words in the singular include the plural and vice versa;

1.2.4 a reference to a clause or schedule is to a clause or schedule of or to this Instrument unless the context requires otherwise;

- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Instrument shall be binding on, and enure to the benefit of, the parties to this Instrument and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to this Instrument (or any provision of it) or any other agreement or document referred to in this Instrument is a reference to this Instrument, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Instrument) from time to time;
- 1.2.7 a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.8 a reference to an amendment includes a supplement, variation, novation or re-enactment (and amended shall be construed accordingly);
- 1.2.9 a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.10 a reference to an authorisation includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation;
- 1.2.11 a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.12 a reference to writing or written includes fax and email;
- 1.2.13 a reference to continuing in relation to an Event of Default means an Event of Default which has not been remedied or waived;
- 1.2.14 an obligation on a party not to do something includes an obligation not to allow that thing to be done; and
- 1.2.15 the headings do not form part of this Instrument and do not affect its interpretation.

1.3 Clawback

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

2 Covenant to Pay

The Borrower shall on demand pay to the Lender and discharge the Secured Liabilities when they become due.

3 Grant of Security

- 3.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower grants in favour of the Lender a floating charge over the Secured Assets.
- 3.2 The floating charge created by this Instrument shall, subject to section 464(2) of the Companies Act 1985, rank in priority to any other fixed security which shall be created by the Borrower after its execution of this Instrument (other than a fixed security in favour of the

Lender) and to any other floating charge which shall be created by the Borrower after its execution of this Instrument 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.

- 3.3 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this Instrument is a qualifying floating charge for the purpose of that paragraph 14.
- 3.4 The Borrower shall not create or permit to subsist or arise any Security Right over any of its rights, assets, property, undertaking and revenue other than that created by this Instrument or with the Security Trustee's prior written consent.
- 3.5 The Borrower shall not sell, transfer, assign, licence, lease, hire out, grant, lend, discount, factor, exchange, compound, set-off, grant any interest in, part with possession or ownership of, grant time or indulgence in respect of or otherwise dispose of any Secured Asset or the equity of redemption therein or permit any person to do any such thing.
- 3.6 Clause 3.5 shall not apply to any dealing made with the prior written consent of the Security Trustee or made in the ordinary course of trade (as carried on at the date of this Instrument but excluding unprecedented and exceptional dealings or transactions) in respect of any Secured Asset.
- 3.7 The Borrower shall on the date of this Instrument or, if later, upon becoming entitled to them, deposit (or procure the deposit) with the Lender and the Lender shall be entitled to hold all original deeds and documents of title in the Borrower's control or possession relating to any Secured Asset.
- 3.8 If, for any reason, the Lender ceases to hold any such deeds or documents, it may by notice to the Borrower require that such deeds or documents be redelivered to it and the Borrower shall immediately comply with that requirement or procure that it is complied with. If any such deeds or documents are at the relevant time held at the Land Register of Scotland (or equivalent registry in any other jurisdiction), the Borrower shall promptly following a demand by the Lender provide or procure the provision to the Lender of such undertakings and such letters relating to the deposit and/or holding thereof as the Lender may require.
- 3.9 Subject to clause 17, upon the irrevocable and unconditional discharge in full of the Secured Liabilities, the Lender shall, at the cost and request of the Borrower, release the Secured Assets from the Security Rights constituted by this Instrument.

4 Liability of Borrower

4.1 Liability Not Discharged

The liability of the Borrower under this Instrument in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 4.1.1 any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities;
- 4.1.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which the Lender may now or after the date of this Instrument have from or against the Borrower or any other person in connection with the Secured Liabilities;
- 4.1.3 any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity or guarantee from or against the Borrower or any other person;
- 4.1.4 any termination, amendment, variation, novation, replacement or supplement of or to any of the Secured Liabilities;

- 4.1.5 any grant of time, indulgence, waiver or concession to the Borrower or any other person;
- 4.1.6 any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Borrower or any other person;
- 4.1.7 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from the Borrower or any other person in connection with the Secured Liabilities;
- 4.1.8 any claim or enforcement of payment from the Borrower or any other person; or
- 4.1.9 any other act or omission which would not have discharged or affected the liability of the Borrower had it been a principal debtor or anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Borrower or otherwise reduce or extinguish its liability under this Instrument.

4.2 Immediate Recourse

The Borrower waives any right it may have of requiring the Lender:

- (a) to take any action or obtain judgment in any court against the Borrower or any other person;
- (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Borrower or any other person; or
- (c) to make demand, enforce or seek to enforce any claim, right or remedy against the Borrower or any other person,

before taking steps to enforce any of its rights or remedies under this Instrument.

5 Representations and Warranties

The Borrower represents and warrants to the Lender as follows:

6 Ownership of Secured Assets

The Borrower is the owner of the Secured Assets.

6.1 No Security

The Secured Assets are free from any Security other than the Permitted Security (if any) and the Security created by this Instrument or as expressly notified to and agreed by the Lender.

6.2 Due Incorporation

The Borrower is a duly incorporated limited liability company or limited liability partnership validly existing under the law of its jurisdiction of incorporation and has the power to own its assets and carry on its business as it is being conducted.

6.3 Powers

- 6.3.1 The Borrower has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this Instrument and the transactions contemplated by it.

6.3.2 No limit on its powers will be exceeded as a result of the grant of Security contemplated by this Instrument.

6.4 Non-Contravention

The entry into and performance by the Borrower of, and the transactions contemplated by, this Instrument do not and will not contravene or conflict with:

6.4.1 its constitutional documents;

6.4.2 any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or

6.4.3 any law or regulation or judicial or official order applicable to it.

6.5 Authorisations

The Borrower has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations in this Instrument. Any such authorisations are in full force and effect.

6.6 Binding Obligations

6.6.1 The Borrower's obligations under this Instrument are, subject to any general principles of law limiting obligations, legal, valid, binding and enforceable.

6.6.2 This Instrument, subject to any general principles of law limiting obligations, creates (or, once entered into, will create):

6.6.2.1 valid, legal binding and enforceable Security for the obligations expressed to be secured by it; and

6.6.2.2 subject to registration in accordance with the Companies Act 2006, perfected Security over the assets expressed to be subject to Security in it,

in favour of the Lender, having the priority and ranking expressed to be created by this Instrument and ranking ahead of all (if any) Security and rights of third parties except the Permitted Security (if any) and those preferred by law.

6.7 No filing or stamp taxes

It is not necessary to file, record or enrol this Instrument with any court or other authority in that jurisdiction or pay any stamp, registration or similar taxes in relation to this Instrument or any transaction contemplated by it (other than in connection with registrations at Companies House).

6.8 No Default

6.8.1 No Event of Default or, on the date of this Instrument, event or circumstance which would, on the giving of notice, expiry of any grace period, making of any determination under this Instrument or any document under which the Borrower owes obligations to the Lender, satisfaction of any other condition (or any combination thereof) become an Event of Default is continuing.

6.8.2 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, making of any determination or satisfaction of any other condition (or any combination thereof) would become) a default or termination event (however described) under any other agreement or instrument

that is binding on it or to which any of its assets is subject which, in the reasonable opinion of the Lender has or is likely to have a Material Adverse Effect.

6.9 Litigation

No litigation, arbitration or administrative proceedings or investigations are taking place, pending or, to the Borrower's knowledge, threatened against it, any of its directors or any of the Secured Assets.

6.10 Information

The information, in written or electronic format, supplied by, or on behalf of, the Borrower to the Lender in connection with this Instrument was, at the time it was supplied or at the date it was stated to be given (as the case may be), to the best of the Borrower's knowledge and belief:

6.10.1 if it was factual information, complete, true and accurate in all material respects;

6.10.2 if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was arrived at after careful consideration;

6.10.3 if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and

6.10.4 not misleading in any material respect nor rendered misleading by a failure to disclose other information,

except to the extent it was amended, superseded or updated by more recent information supplied by or on behalf of the Borrower to the Lender.

6.11 Adverse Claims

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

6.12 Adverse Covenants

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

6.13 No Breach of Laws

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

6.14 No Interference in Enjoyment

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

6.15 No Overriding Interests

Nothing has arisen or has been created or is subsisting, which would be an overriding interest in any Security Asset.

6.16 Avoidance of Security

No Security expressed to be created by this Instrument is liable to be avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise.

6.17 Environmental Compliance

The Borrower has at all times complied in all material respects with all applicable Environmental Law and Environmental Licences.

7 Covenants

The Borrower covenants with the Lender during the continuance of the security constituted by this Instrument as follows:

General Covenants

7.1 Negative Pledge and Disposal Restrictions

Other than the Permitted Security (if any), the Borrower shall not at any time, except with the prior written consent of the Lender:

7.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than the Security created by this Instrument; or

7.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Secured Assets, except in the ordinary course of business in the case of Secured Assets which is only subject to an uncrystallised floating charge; or

7.1.3 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

7.2 Preservation of Secured Assets

The Borrower shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this Instrument.

7.3 Compliance with Laws and Regulations

7.3.1 The Borrower shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.

7.3.2 The Borrower shall:

7.3.2.1 comply with the requirements of any law or regulation relating to or affecting the Secured Assets or the use of it or any part of them;

7.3.2.2 obtain and promptly renew from time to time and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset;

7.3.2.3 obtain and promptly renew from time to time and comply with the terms of all consents and authorisations to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability and admissibility in evidence of the Finance Documents in its jurisdiction of incorporation; and

- 7.3.2.4 promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

7.4 Change of business

The Borrower shall not make any substantial change to the general nature or scope of its business as carried on at the date of this Instrument.

7.5 Information

The Borrower shall:

- 7.5.1 supply to the Lender all documents dispatched by the Borrower to its shareholders (or any class of them) or its creditors generally, at the same time as they are dispatched;
- 7.5.2 supply to the Lender details of any litigation, arbitration or administrative proceedings that are current, threatened or pending against the Borrower as soon as it becomes aware of them and which might, if adversely determined, have a material adverse effect; and
- 7.5.3 supply to the Lender promptly, any further information about the financial condition, assets, business and operations of the Borrower as the Lender may reasonably request.
- 7.5.4 give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may require;
- 7.5.5 permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- 7.5.6 promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Borrower's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

7.6 Enforcement of Rights

The Borrower shall use its best endeavours to:

- 7.6.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower's counterparties to any agreement or arrangement with the Borrower forming part of the Secured Assets; and
- 7.6.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets which the Lender may require from time to time.

7.7 Notice of Breaches

The Borrower shall promptly on becoming aware of any of the same give the Lender notice in writing of any breach of:

- 7.7.1 any representation or warranty set out in this Instrument; and

7.7.2 any covenant set out in this Instrument **Error! Reference source not found..**

7.8 Notification of Default

7.8.1 The Borrower shall notify the Lender of any Event of Default or any event or circumstance which would, on the giving of notice, expiry of any grace period, making of any determination under this Instrument or any document under which the Borrower owes obligations to the Lender or satisfaction of any other condition (or any combination thereof), become an Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

7.8.2 The Borrower shall, promptly on request by the Lender, supply a certificate signed by its directors or senior officers on its behalf certifying that no Event of Default is continuing (or, if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it).

7.9 Title Documents

The Borrower shall, on the execution of this Instrument (or, if later, the date of acquisition of the relevant Secured Assets), deposit with the Lender and the Lender shall, for the duration of this Instrument be entitled to hold:

7.9.1 all deeds and documents of title relating to the Secured Assets which are in the possession or control of the Borrower (if these are not within the possession and/or control of the Borrower, the Borrower undertakes to obtain possession of all such deeds and documents of title); and

7.9.2 all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time.

7.10 Insurance

7.10.1 The Borrower shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against:

7.10.1.1 loss or damage by fire or terrorist acts, including any third party liability arising from such acts;

7.10.1.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and

7.10.1.3 any other risk, perils and contingencies as the Lender may reasonably require.

7.10.2 Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender, and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Secured Assets (meaning in the case of any premises comprised within the Secured Assets, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and, in the case of any Charged Property, loss of rents payable by the tenants or other occupiers of any Charged Property for a period of at least three years, including provision for increases in rent during the period of insurance.

- 7.10.3 The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to any insurance as is required by clause 7.10.1 (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).
- 7.10.4 The Borrower shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed on each insurance policy (other than public liability and third party liability insurances) effected or maintained by it or any person on its behalf in accordance with clause 7.10.1 but without the Lender having any liability for any premium in relation to those insurance policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any insurance policy.
- 7.10.5 The Borrower shall ensure that each insurance policy effected or maintained by it or any person on its behalf in accordance with clause 7.10.1 contains:
- 7.10.5.1 a loss payee clause under which the Lender is named as first loss payee (other than in respect of any claim under any public liability and third party liability insurances);
- 7.10.5.2 terms ensuring that it cannot be avoided or vitiated as against the Lender by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;
- 7.10.5.3 a waiver of each insurer's rights of subrogation against the Borrower, the Lender and the tenants of any Charged Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of any Charged Property or any insurance policy; and
- 7.10.5.4 terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Lender.
- 7.10.6 The Borrower shall:
- 7.10.6.1 promptly pay all premiums in respect of each insurance policy as is required by clause 7.10.1 and do all other things necessary to keep that policy in full force and effect; and
- 7.10.6.2 (if the Lender so requires) give to the Lender copies of the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy as is required by clause 7.10.1 (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).
- 7.10.7 The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy as is required by clause 7.10.1.
- 7.10.8 All monies payable under any insurance policy maintained by the Borrower in accordance with clause 7.10.1 at any time (whether or not the security constituted by this Instrument has become enforceable) shall:
- 7.10.8.1 be paid immediately to the Lender;

7.10.8.2 if they are not paid directly to the Lender by the insurers, be held, pending such payment, by the Borrower as trustee of the same for the benefit of the Lender; and

7.10.8.3 at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this Instrument has become enforceable and if the Lender so directs, in or towards discharge or reduction of the Secured Liabilities.

7.11 Further Assurance

The Borrower, at its own cost, shall prepare and execute such further legal or other mortgages, charges, assignments or transfers (containing a power of sale and such other provisions as the Lender may reasonably require) in favour of the Lender as the Lender, in its absolute discretion, requires from time to time over all or any part of the Secured Assets and give all notices, orders and directions which the Lender may require in its absolute discretion for perfecting, protecting or facilitating the realisation of its security over the Secured Assets.

7.12 Appointment of Accountants

7.12.1 The Borrower shall:

7.12.1.1 at its own cost, if at any time so required by the Lender, appoint an accountant or firm of accountants nominated by the Lender to investigate the financial affairs of the Borrower and those of its subsidiaries and report to the Lender; and

7.12.1.2 co-operate fully with any accountants so appointed and immediately provide such accountants with all information requested.

7.12.2 The Borrower authorises the Lender to make such appointment as it shall think fit at any time, without further authority from the Borrower. In every such case, the fees and expenses of those accountants shall be paid by the Borrower but, if paid by the Lender on the Borrower's behalf, those fees and expenses shall be fully reimbursed to the Lender.

Book Debts Covenants

7.13 Preservation of Book Debts

The Borrower shall not (except as provided by clause 7.14, or with the prior written consent of the Lender) release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

7.14 Realising Book Debts

The Borrower shall:

7.14.1 not, without the prior written consent of the Lender, release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts; and

7.14.2 if called on so to do by the Lender, assign the Book Debts to the Lender in such terms as the Lender may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

Property covenants

7.15 Maintenance

The Borrower shall keep all buildings and all fixtures and fittings on each Charged Property in good and substantial repair and condition and shall keep all premises adequately and properly painted and decorated and replace any fixtures and fittings which have become worn out or otherwise unfit for use with others of a like nature and equal value.

7.16 No Alterations

The Borrower shall not, without the prior written consent of the Lender:

- 7.16.1 pull down or remove the whole or any part of any building forming part of any Charged Property or permit the same to occur; or
- 7.16.2 make or permit to be made any material alterations to any Charged Property or sever or remove or permit to be severed and removed, any of its fixtures or fittings (except to make any necessary repairs or to replace the same); or
- 7.16.3 remove or make any material alterations to any of the Equipment belonging to, or in use by, the Borrower on any Charged Property (except to affect necessary repairs or replace them with new or improved models or substitutes).

7.17 Conduct of Business on Charged Properties

The Borrower shall carry on its trade and business on those parts (if any) of the Charged Properties as are used for the purpose of trade and business in accordance with the standards of good management from time to time current in such trade or business.

7.18 Notices or claims relating to property

The Borrower shall:

- 7.18.1 give full particulars to the Lender of any notice, order, direction, designation, resolution or proposal given or made by any planning authority or other public body or authority (a "Notice") that specifically applies to any Charged Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
- 7.18.2 (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, such objections or representations in respect of any such Notice as the Lender thinks fit.
- 7.18.3 The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to a Charged Property.

7.19 Compliance with and enforcement of covenants

The Borrower shall:

- 7.19.1 observe and perform all covenants, stipulations and conditions to which each Charged Property, or the use of it, is or may be subjected and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and

7.19.2 diligently enforce all covenants, stipulations and conditions benefiting each Charged Property and shall not (and shall not agree to) waive, release or vary any of the same.

7.20 Payment of rent and outgoings

The Borrower shall, where a Charged Property or part of it, is held under a lease, duly and punctually pay all rents due from time to time and pay when due all charges, taxes, rates, duties, assessments and other outgoings relating to or imposed on each Charged Property or its occupier.

7.21 Leases and licences affecting Charged Properties

The Borrower shall not, without the prior written consent of the Lender:

7.21.1 grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Charged Property; or

7.21.2 in any other way dispose of, or agree to dispose of, surrender or create any interest in the whole or any part of any Charged Property; or

7.21.3 let any person into occupation of or share occupation of the whole or any part of the Charged Property; or

7.21.4 grant any consent or licence under any lease or licence affecting any Charged Property.

7.22 Development Restrictions

The Borrower shall not, without the prior written consent of the Lender, carry out or permit or suffer to be carried out on any Charged Property any development (as defined in the Town and Country Planning (Scotland) Act 1997) or change or permit or suffer to be changed the use of any Charged Property.

7.23 Environment

The Borrower shall in respect of each Charged Property comply in all material respects with all the requirements of Environmental Law and all Environmental Licences;

7.24 No Restrictive Obligations

The Borrower shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of any Charged Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Charged Property.

7.25 Proprietary Rights

The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Charged Property without the prior written consent of the Lender (save for a landlord asserting a proprietary or other like right or interest over any leaseholder property forming part of the Charged Property) in respect of which the Borrower is a tenant).

7.26 Inspection

The Borrower shall permit the Lender and any Receiver and any person appointed by either of them to enter on and inspect any Charged Property on reasonable prior notice.

7.27 Property Information

The Borrower shall inform the Lender promptly of any acquisition by the Borrower of, or contract made by the Borrower to acquire, any freehold, leasehold or other interest in any property.

7.28 VAT Option to Tax

The Borrower, shall not, without the prior written consent of the Lender:

7.28.1 exercise any VAT option to tax in relation to any Charged Property; or

7.28.2 revoke any VAT option to tax exercised and disclosed to the Lender, before the date of this Instrument.

Equipment Covenants

7.29 Maintenance of Equipment

The Borrower shall:

7.29.1 maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all manuals, handbooks, manufacturer's instructions and recommendations and maintenance and service schedules; and

7.29.2 at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and

7.29.3 not permit any Equipment to be:

7.29.3.1 used or handled other than by properly qualified and trained persons; or

7.29.3.2 overloaded or used for any purpose for which it is not designed or reasonably suitable.

7.30 Payment of Equipment Taxes

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

Intellectual Property Covenants

7.31 Preservation of Rights

The Borrower shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation), observing all covenants and stipulations relating to such rights and paying all applicable renewal fees, licence fees and other outgoings.

7.32 Registration of Intellectual Property

The Borrower shall use all reasonable efforts to effect registration of applications for registration of any Intellectual Property and keep the Lender informed of all matters relating to such registration.

7.33 Maintenance of Intellectual Property

The Borrower shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

8 Powers of the Lender

The Lender shall have the following powers:

8.1 Power to Remedy

8.1.1 The Lender shall be entitled (but shall not be obliged) to remedy a breach at any time by the Borrower of any of its obligations contained in this Instrument and the Borrower irrevocably authorises the Lender and its agents to do all such things as are necessary or desirable for that purpose.

8.1.2 Any monies expended by the Lender in remedying a breach by the Borrower of its obligations in this Instrument shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 17.1.

8.2 Exercise of Rights

The rights of the Lender under clause 8.1 are without prejudice to any other rights of the Lender under this Instrument and the exercise of those rights shall not make the Lender liable to account as a creditor in possession.

8.3 Lender has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this Instrument (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this Instrument has become enforceable, be exercised by the Lender in relation to any Secured Assets whether or not it has taken possession of any of the Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

8.4 Currencies of Denomination

For the purpose of or pending the discharge of any of the Secured Liabilities the Lender may convert any monies received, recovered or realised by the Lender under this Instrument (including the proceeds of any previous conversion under this clause 8.4) from their existing currencies of denomination into such other currencies of denomination as the Lender may think fit and any such conversion shall be effected at the Lender's then prevailing spot selling rate of exchange for such other currency against the existing currency. Each previous reference in this clause 8.4 to a currency extends to funds of that currency and for the avoidance of doubt funds of one currency may be converted into different funds of the same currency.

8.5 New Accounts

8.5.1 If the Lender receives notice of any subsequent Security or other interest affecting all or part of the Secured Assets, the Lender may open a new account or accounts for the Borrower in the Lender's books and (without prejudice to the Lender's right to combine accounts) no money paid to the credit of the Borrower in any such new account will be appropriated towards or have the effect of discharging any part of the Secured Liabilities.

8.5.2 If the Lender does not open a new account or accounts immediately on receipt of notice under clause 8.5.1, then, unless the Lender gives express written notice to the contrary to the Borrower, as from the time of receipt of the relevant notice by the Lender all payments made by the Borrower to the Lender, in the absence of any express appropriation by the Borrower to the contrary, shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities.

8.6 Indulgence

The Lender may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person or persons not being a party to this Instrument (whether or not such person or persons are jointly liable with the Borrower) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this Instrument or to the liability of the Borrower for the Secured Liabilities.

8.7 Appointment of an administrator

8.7.1 The Lender may, without notice to the Borrower, appoint any one or more persons to be an Administrator of the Borrower pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Instrument becomes enforceable.

8.7.2 Any appointment under this clause 8.7 shall:

8.7.3 be in writing signed by a duly authorised signatory of the Lender; and

8.7.4 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

9 Event of Default

The following events shall constitute Events of Default for the purpose of this Instrument:

9.1 the Borrower fails to pay any of the Secured Liabilities when due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three Business Days of its due date or by a Disruption Event and payment is made within three Business Days of its due date;

9.2 the Borrower fails (other than a failure to pay referred to in clause 9.1) to comply with any provision of this Instrument or any document under which the Borrower owes obligations to the Lender and (if the Lender considers that the default is capable of remedy) such default is not remedied within three days of the earlier of the Lender notifying the Borrower of the default and the remedy required and the Borrower becoming aware of the default;

9.3 any representation, warranty or statement made, repeated or deemed made by the Borrower to the Lender is (or proves to have been) incomplete, untrue, incorrect or misleading in any material respect when made, repeated or deemed made;

9.4 the Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;

9.5 any Borrowed Money is not paid when due or within any originally applicable grace period;

9.6 any Borrowed Money becomes due, or capable of being declared due and payable, before its stated maturity by reason of an event of default (however described);

9.7 any commitment for any Borrowed Money is cancelled or suspended by a creditor of the Borrower by reason of an event of default (however described);

9.8 any creditor of the Borrower becomes entitled to declare any Borrowed Money due and payable before its stated maturity by reason of an event of default (however described);

- 9.9 the Borrower stops or suspends payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due;
- 9.10 the Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors (excluding the Lender) with a view to rescheduling any of its Indebtedness (because of actual or anticipated financial difficulties);
- 9.11 a moratorium is declared in respect of any Indebtedness of the Borrower;
- 9.12 any action, proceedings, procedure or step is taken in relation to the suspension of payments, a moratorium of any Indebtedness, winding up (save where such winding up is frivolous or vexatious in nature and is discharged, stayed or dismissed within 14 days), dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement, restructuring plan or otherwise) of the Borrower;
- 9.13 any action, proceedings, procedure or step is taken in relation to a composition, compromise, assignment or arrangement with any creditor of the Borrower;
- 9.14 any action, proceedings, procedure or step is taken in relation to the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, monitor or other similar officer in respect of the Borrower or any of its assets;
- 9.15 the value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities);
- 9.16 any event occurs in relation to the Borrower similar to those set out in clauses 9.9 to 9.15 (inclusive) under the laws of any applicable jurisdiction;
- 9.17 control of the Borrower's goods is taken or a distress, attachment, execution, expropriation, sequestration or other analogous legal process in any jurisdiction is levied, enforced or sued out on, or against, the Borrower's assets and is not discharged or stayed within 21 days;
- 9.18 any Security on or over the assets of the Borrower becomes enforceable;
- 9.19 all or any part of this Instrument or any document under which the Borrower owes obligations to the Lender is or becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect or it becomes unlawful for any party to this Instrument or any document under which the Borrower owed obligations to the Lender (other than the Lender) to perform any obligation under this Instrument or that document;
- 9.20 the Borrower repudiates or rescinds or shows an intention to repudiate or rescind this Instrument or any document under which the Borrower owes obligations to the Lender; or
- 9.21 any event occurs (or circumstances exist) that, in the reasonable opinion of the Lender, has or is likely to have a Material Adverse Effect;
- and in any such event (whether or not the event is continuing), without prejudice to any other rights of the Lender, the Lender may in its absolute discretion enforce all or any part of the security created by this Instrument as it sees fit.

10 **Enforcement**

10.1 **Enforcement of Security**

The security constituted by this Instrument shall be immediately enforceable if an Event of Default occurs.

10.2 **Discretion**

After the security constituted by this Instrument has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit and take possession of and hold or dispose of all or any part of the Secured Assets.

10.3 Access on enforcement

10.3.1 At any time after the Lender has demanded payment of the Secured Liabilities or if the Borrower defaults in the performance of its obligations under this Instrument or any loan agreement between the parties, the Borrower will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Borrower for, or by any reason of, that entry.

10.3.2 At all times, the Borrower must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 10.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

10.4 Redemption of Prior Security

10.4.1 At any time after the security constituted by this Instrument has become enforceable, or after any powers conferred by any Security having priority to this Instrument shall have become exercisable, the Lender may:

10.4.1.1 redeem any prior Security over any Secured Asset;

10.4.1.2 procure the transfer of that Security to itself; and

10.4.2 settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Borrower).

10.4.3 The Borrower shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this Instrument as part of the Secured Liabilities.

10.5 Protection of third parties

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire:

10.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

10.5.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or

10.5.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

10.6 No liability as creditor in possession

Neither the Lender nor any Receiver or Delegate shall be liable, by reason of entering into possession of a Secured Asset or for any other reason, to account as creditor in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on

realisation of, or for any act, default or omission for which a creditor in possession might be liable.

10.7 Conclusive discharge to purchasers

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

10.8 Right of appropriation

10.8.1 To the extent that:

10.8.1.1 the Secured Assets constitute Financial Collateral; and

10.8.1.2 this Instrument and the obligations of the Borrower under it constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this Instrument has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.

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

10.8.2.1 in the case of cash, the amount standing to the credit of each of the Borrower's accounts with any bank, financial institution or other person, together with any accrued but unpaid interest, at the time the right of appropriation is exercised; and

10.8.2.2 in the case of Investments, the market price of those Investments at the time the right of appropriation is exercised determined by the Lender by reference to a recognised market index or by any other method that the Lender may select (including independent valuation).

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

11 Receiver

11.1 Appointment

At any time after the security constituted by this Instrument has become enforceable, or at the request of the Borrower, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

11.2 Removal

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

11.3 Remuneration

The Lender may fix the remuneration of any Receiver appointed by it, and the remuneration of the Receiver shall be a debt secured by this Instrument, to the extent not otherwise discharged.

11.4 Power of appointment additional to statutory powers

The power to appoint a Receiver conferred by this Instrument shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986.

11.5 Power of appointment exercisable despite prior appointments

The power to appoint a Receiver (whether conferred by this Instrument or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Secured Assets.

11.6 Agent of the Borrower

Any Receiver appointed by the Lender under this Instrument shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

12 Receiver's Powers

A Receiver shall have, in addition to the powers conferred on receivers by statute, the following further powers:

12.1 General

12.1.1 Any Receiver appointed by the Lender under this Instrument shall, in addition to the powers conferred on it by statute, have the rights, powers and discretions set out in this clause 12.

12.1.2 A Receiver shall have those rights and powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.

12.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this Instrument individually and to the exclusion of any other Receiver.

12.1.4 Any exercise by a Receiver of the powers given to it may be on behalf of the Borrower, the directors of the Borrower or itself.

12.2 Power to Repair and Develop Charged Properties

A Receiver may undertake or complete any works of repair, alteration, building or development on the Charged Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

12.3 Power to Grant or accept Surrender of Leases

A Receiver may grant or accept surrenders of any leases or tenancies affecting the Charged Properties upon such terms and subject to such conditions as he thinks fit.

12.4 Power to Employ Personnel and Advisors

12.4.1 A Receiver may provide services and employ, or engage, such managers, contractors and other personnel and professional advisors on such terms and subject to any conditions as he deems expedient.

12.4.2 A Receiver may discharge any such person appointed by the Borrower.

12.5 Power to Make and revoke VAT Elections

A Receiver may make, exercise or revoke any VAT option to tax as he thinks fit.

12.6 Power to Charge Remuneration

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

12.7 Power to Realise Secured Assets

A Receiver may take immediate possession of, get in and realise any Secured Asset.

12.8 Power to Manage or Reconstruct the Borrower's Business

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower.

12.9 Power to Dispose of Secured Assets

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. A sale may be for any consideration that the Receiver thinks fit and the Receiver may promote, or concur in promoting a company to purchase the Secured Assets to be sold.

12.10 Sever fixtures and fittings

A Receiver may sever and sell separately any fixtures and fittings from any Charged Property without the consent of the Borrower.

12.11 Power to Sell Book Debts

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

12.12 Valid receipts

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper and desirable for realising any of the Secured Assets.

12.13 Power to Make Settlements

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

12.14 Legal Action

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

12.15 Power to Improve the Equipment

A Receiver may make substitutions of, or improvements to, the Equipment as he may think expedient.

12.16 Power to Make Calls On Borrower Members

A Receiver may make calls conditionally or unconditionally on the members of the Borrower in respect of the uncalled capital with such and the same powers for that purpose and for the purpose of enforcing payments of any calls so made as are conferred by the Articles of Association of the Borrower on its directors in respect of calls authorised to be made by them.

12.17 Power to Insure

A Receiver may, if he thinks fit, but without prejudice to the indemnity contained in clause 17, effect with any insurer any policy or policies of insurance either in lieu or satisfaction of, or in addition to, such insurance.

12.18 Subsidiaries

A Receiver may form a subsidiary of the Borrower and transfer to that subsidiary any Secured Asset.

12.19 Power to Borrow

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

12.20 Power to Redeem Prior Security

A Receiver may redeem any prior Security and to settle and pass the accounts to which the Security relates and any accounts so settled and passed will be conclusive and binding on the Borrower and the monies so paid will be deemed to be an expense properly incurred by him.

12.21 Delegation

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

12.22 Absolute Beneficial Owner

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights it would be capable of exercising as, and do all acts and things, an absolute beneficial owner could exercise or do, in the ownership and management of the Secured Assets or any part of the Secured Assets.

12.23 Incidental Powers

A Receiver may do all such other acts and things as he may consider incidental or conducive to any of the matters or powers in this clause 12 or which he lawfully may or can do as agent for the Borrower.

13 Delegation

- 13.1.1 The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other matter to any person any right, power, authority or discretion conferred on it by this Instrument (including the power of attorney granted under clause 19.
- 13.1.2 The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate that it thinks fit.
- 13.1.3 Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

14 Application of Proceeds

Order of Application

- 14.1 All monies received or recovered by the Lender, a Receiver or a Delegate under this Instrument or in connection with the realisation or enforcement of all or part of the security constituted by this Instrument (other than sums received under any insurance policy) shall be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Borrower):
 - 14.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Instrument, and of all remuneration due to any Receiver under or in connection with this Instrument;
 - 14.1.2 in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and
 - 14.1.3 in payment of the surplus (if any) to the Borrower or other person entitled to it.

15 Appropriation

Neither the Lender, any Receiver nor any Delegate shall be bound to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

16 Suspense Account

All monies received by the Lender, a Receiver or a Delegate under this Instrument (other than sums received under any insurance policy that are not going to be applied in or towards discharge of the Secured Liabilities):

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

17 Costs and Indemnity

17.1 Costs

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

- 17.1.1 this Instrument or the Secured Assets; or
- 17.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this Instrument; or
- 17.1.3 taking proceedings for, or recovering, any of the Secured Liabilities,

(including, without limitation, the costs of any proceedings in relation to this Instrument or the Secured Liabilities) together with, in the case of clause 17.1.2 and 17.1.3, interest at the rate and in the manner specified in the Facility Agreement.

17.2 Indemnity

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

17.2.1.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Instrument or by law in respect of the Secured Assets;

17.2.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Instrument; or

17.2.1.3 any default or delay by the Borrower in performing any of its obligations under this Instrument.

17.2.2 Any past or present employee or agent may enforce the terms of this clause subject to and in accordance with the provisions of the Contract (Third Party Rights) (Scotland) Act 2017.

18 Further Assurance

The Borrower shall promptly, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

- 18.1 creating, perfecting or protecting the security created or intended to be created by this Instrument;
- 18.2 facilitating the realisation of any Secured Asset; or
- 18.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset;

including, without limitation the execution of any mortgage, transfer, conveyance, assignment, assignation or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

19 Power of Attorney

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

19.1.1 the Borrower is required to execute and do under this Instrument; or

19.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Instrument or by law on the Lender, any Receiver or any Delegate.

19.2 The Borrower ratifies and confirms and agrees to ratify and confirm, anything that any of its attorneys and mandatorys may do in the proper and lawful exercise, or purported exercise of all or any of the rights, powers, authorities and discretions referred to in clause 19.1.

20 **Release**

Subject to clause 26.1, upon the expiry of the Security Period (but not otherwise) the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to release the Secured Assets from the security constituted by this Instrument and reassign the Secured Assets to the Borrower.

21 **Assignment and Transfer**

21.1 **Assignment by Lender**

21.1.1 The Lender may at any time, without the consent of the Borrower, assign or transfer the whole or any part of the Lender's rights and/or obligations under this Instrument to any person.

21.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Secured Assets and this Instrument that the Lender considers appropriate.

21.2 **Assignment by Borrower**

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

21.3 **Permitted Disclosure**

The Lender may disclose to and discuss with:

21.3.1 an Affiliate;

21.3.2 any actual or potential assignee, transferee or sub-participant of its rights or obligations under this Instrument (and any of their professional advisers and auditors);

21.3.3 any credit referencing, fraud prevention and rating agencies;

21.3.4 a third-party acquirer of the business of the Lender;

21.3.5 any party required by applicable law or regulation, governmental, tax or regulatory body or law enforcement agency; or

21.3.6 any other person with the Borrower's consent,

21.3.7 in addition to any publicly available information, such information about this Instrument and the Borrower as the Lender shall consider appropriate, if the person to whom the information is given is informed that it:

21.3.8 is confidential; and

21.3.9 may be price-sensitive,

21.3.10 except that the Lender does not need to inform the recipient of 21.3.8 and 21.3.9 above if the recipient is subject to professional obligations to maintain the confidentiality of the information;

21.3.11 to its professional advisers, any governmental, banking, taxation or regulatory authority or similar body, or any other person to the extent that it is required to do so by any applicable law, regulation, court order or the rules of any relevant stock exchange, any information about this Instrument and the Borrower.

21.4 The Borrower hereby authorises and expressly permits the Lender to disclose and discuss to any of the Borrower's professional advisers including but not limited to the Borrower's banking, accountancy and legal advisers any information about this Instrument and its relating documentation as the Lender shall consider appropriate, if the person to whom the information is given is informed that it:

21.4.1 is confidential; and

21.4.2 may be price-sensitive,

except that the Lender does not need to inform the recipient of 21.4.1 and 21.4.2 above if the recipient is subject to professional obligations to maintain the confidentiality of the information.

22 **Set-Off**

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

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

23 **Amendments, Waivers and Consents**

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

23.2 A waiver of any right or remedy under this Instrument or by law or any consent given under this Instrument, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

23.3 A failure or delay by a party to exercise any right or remedy provided under this Instrument or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or constitute an election to affirm this Instrument. No single or partial exercise of any right or remedy provided under this Instrument or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Instrument by the Lender shall be effective unless it is in writing.

24 **Rights and remedies**

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

24.2 This Instrument shall be in addition to and independent of every other security or guarantee which the Lender may at any time hold for any of the Secured Liabilities and no prior security held by the Lender over the whole or any part of the Secured Assets shall merge in the security created by this Instrument.

25 Third Party Rights

Except as expressly provided in this Instrument, a person who is not a party to this Instrument shall not have any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce, or enjoy the benefit of, any term of this Instrument. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

26 Further provisions

26.1 Independent Security

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

26.2 Continuing Security

The security constituted by this Instrument shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this Instrument in writing.

26.3 Discharge Conditional

Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional upon no payment or security received by the Lender in respect of the Secured Liabilities being avoided or reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration or receivership or otherwise. Despite any such release, discharge or settlement:

26.3.1 the Lender or its nominee may retain this Instrument and the security created by or pursuant to this Instrument, including all certificates and documents relating to the whole or any part of the Secured Assets, for such period as the Lender shall deem necessary to provide the Lender with security against any such avoidance or reduction or order for refund; and

26.3.2 the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if such settlement, discharge or release had not occurred.

26.4 Certificates

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower shall (in the absence of any manifest error) be conclusive evidence of the amount due.

26.5 Severance

If any provision (or part of a provision) of this Instrument is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a

provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Instrument.

27 Notices

27.1 Each notice or other communication required to be given under, or in connection with, this Instrument shall be in writing, delivered personally or sent by pre-paid first class letter or email; and

27.1.1 sent to the Lender at:

Address:	Fourth Floor, 3 George's Dock, IFSC, Dublin 1, Dublin
Email:	daniel.rodrigues@smecapital.com
Attention:	The Directors

27.1.2 sent to the Borrower at:

Address:	29 Inaclete Road, Stornoway, Isle of Lewis, HS1 2RB
Email:	Ali@grillburger.co.uk
Attention:	The Directors; or

27.1.3 to such other address or email address as is notified in writing by one party to the other from time to time.

27.2 Any notice or other communication given by the Lender shall be deemed to have been received:

27.2.1 if delivered personally, at the time of delivery; or

27.2.2 in the case of pre-paid first class letter, 48 hours from the date of posting; or

27.2.3 in the case of email, at the time of transmission.

27.3 A notice or other communication given as described in paragraph 27.1 or paragraph 27.2 on a day which is not a Business Day, or after normal business hours in the place of receipt, shall be deemed to have been received on the next Business Day.

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

28 Governing Law and Jurisdiction

28.1 Governing Law

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

28.2 Jurisdiction

The parties to this Instrument irrevocably agree that, subject as provided below, the courts of Scotland shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Instrument or its subject matter or its formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other

jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

28.3 Registration

The Borrower irrevocably consents to the registration of this Instrument and of the certificate referred to in clause 26.4 above for preservation and execution.

IN WITNESS WHEREOF these presents consisting of this and preceding 31 pages are subscribed as follows and, ~~where executed in counterparts~~, have a delivery date of **17 JUNE** 2022

Subscribed for and on behalf of
**GRILLBURGER FROZEN FOODS
LIMITED**

by

On 10 JUNE 2022
At STORNOWAY

In the presence of a witness:

~~_____~~
MRS JULIA CLARK

~~_____~~

HSZ OHS


Signature of Director

SEAN CLARK

Full Name of Director (Please Print)

Witness (Signature)

Witness Full Name

Witness Address