



Registration of a Charge

Company name: **BRAEHEAD FOODS LIMITED**

Company number: **SC193995**



X82QZ5O3

Received for Electronic Filing: **05/04/2019**

Details of Charge

Date of creation: **05/04/2019**

Charge code: **SC19 3995 0010**

Persons entitled: **SCOTTISH ENTERPRISE**

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.**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 193995

Charge code: SC19 3995 0010

The Registrar of Companies for Scotland hereby certifies that a charge dated 5th April 2019 and created by BRAEHEAD FOODS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th April 2019 .

Given at Companies House, Edinburgh on 8th April 2019

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**

BRAEHEAD FOODS LIMITED


as Chargor

In favour of

SCOTTISH ENTERPRISE

as Lender

CERTIFIED A TRUE
COPY SAVE FOR THE
MATERIAL REDACTED
PURSUANT TO S859G
OF THE COMPANIES
ACT 2006


BRODIES LLP
Solicitors

05 April 2019

Ref: SC092153

BOND AND FLOATING CHARGE

THIS IS AN IMPORTANT DOCUMENT WHICH CONFERS LEGAL RIGHTS AND OBLIGATIONS ON THE PARTIES TO IT. YOU SHOULD TAKE INDEPENDENT LEGAL ADVICE BEFORE SIGNING THIS DOCUMENT AND SIGN ONLY IF YOU WANT TO BE LEGALLY BOUND BY ITS TERMS

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For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Floating Charge is delivered on 5 APRIL 2019

BOND AND FLOATING CHARGE

by

- (1) **BRAEHEAD FOODS LIMITED**, a company incorporated under the Companies Acts with registered number SC193995 and having its registered office at Unit 7 Moorfield North Industrial Park, Kilmarnock, Ayrshire, KA2 0FE (the "**Chargor**")

in favour of

- (2) **SCOTTISH ENTERPRISE**, established under the Enterprise and New Towns (Scotland) Act 1990 and having its principal place of business at Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ (the "**Lender**")

CONSIDERING THAT:

- (A) the Lender has agreed to make a loan facility available under the Facility Agreement (as defined below);
- (B) one of the conditions precedent to the availability of the facility referred to in paragraph (A) above is that the Chargor grants to the Lender this Floating Charge.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Floating Charge:

"**Administrator**" means any administrator appointed pursuant to this Floating Charge;

"**Early Repayment Event**" has the meaning given to it in the Terms and Conditions;

"**Facility Agreement**" means, together, the Loan Confirmation and the Terms and Conditions;

"**Floating Charge**" means this bond and floating charge;

"**Loan Confirmation**" means the loan confirmation between the Chargor and the Lender, dated on or around the date hereof;

"Receiver" means any receiver or administrative receiver appointed in respect of the Secured Assets (whether pursuant to this Floating Charge, pursuant to any statute, by a court or otherwise) and includes joint receivers;

"Secured Assets" means the whole of the property (including uncalled capital) which is or may be from time to time while this Floating Charge is in force comprised in the property and undertaking of the Chargor;

"Secured Liabilities" means all present and future obligations and liabilities of the Chargor to the Lender, whether actual, contingent, sole, joint and/or several or otherwise on any account whatsoever, including, without prejudice to the foregoing generality, all obligations to indemnify the Lender; and

"Terms and Conditions" means the Lender's standard loan terms and conditions, from time to time.

1.2 Construction

- 1.2.1 Capitalised terms defined in the Facility Agreement have, unless expressly defined in this Floating Charge, the same meaning in this Floating Charge.
- 1.2.2 The provisions of clause 1.2 (*Interpretation*) of the Terms and Conditions apply to this Floating Charge as though they were set out in full in this Floating Charge *mutatis mutandis* except that references to the Facility Agreement are to be construed as references to this Floating Charge.
- 1.2.3 A Finance Document or other document includes (without prejudice to any prohibition on amendments) all amendments however fundamental to that Finance Document or other document, including any amendment providing for any increase in the amount of a facility or any additional facility.
- 1.2.4 The term this "Security" means any security created by this Floating Charge.
- 1.2.5 A reference to any asset, unless the context otherwise requires, includes any present and future asset.
- 1.2.6 If the Lender considers that an amount paid to it or a Receiver is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Floating Charge.
- 1.2.7 Unless the context otherwise requires, a reference to a Secured Asset includes the proceeds of sale of that Secured Asset.

1.3 Third Party Rights

A person who is not a party to this Floating Charge has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or enjoy the benefit of any term of this Floating Charge.

2 BOND

2.1 The Chargor undertakes to the Lender that it will pay or discharge to the Lender all the Secured Liabilities on demand in writing when the Secured Liabilities become due for payment or discharge (whether by acceleration or otherwise).

2.2 Paragraph 14 of Schedule B1 to the Insolvency Act (incorporated by Schedule 16 to the Enterprise Act 2002) shall apply to this Floating Charge which is accordingly a qualifying floating charge. Notwithstanding any other provision of this Floating Charge, the Chargor and the Lender agree and acknowledge that an Administrator may only be appointed if the Chargor is a "company" within the meaning of paragraph 111 of Schedule B1 to the Insolvency Act and that a Receiver may only be appointed if the Chargor falls within the terms of section 51 of the Insolvency Act but the Floating Charge falls outside the terms of section 72A of the Insolvency Act.

3 FLOATING CHARGE

The Chargor as security for the payment and discharge of all the Secured Liabilities hereby grants in favour of the Lender a third ranking floating charge over the Secured Assets.

4 NEGATIVE PLEDGE AND RANKING OF FLOATING CHARGE

4.1 The Chargor agrees that it shall be prohibited from granting or creating subsequent to the date of execution of this Floating Charge any fixed security or any other floating charge over the Secured Assets or any part or parts of them, other than (i) in favour of the Lender or in favour of another person and with the prior written consent of the Lender, and/or (ii) Permitted Security.

4.2 Any fixed security granted by the Chargor in favour of the Lender (whether before or after the date of execution of this Floating Charge) shall rank in priority to this Security.

4.3 In the event that the Chargor grants or creates any fixed security or floating charge in breach of the prohibition in Clause 4.1 or with the consent of the Lender under Clause 4.1 but with no written agreement of the Lender as to the ranking of them, this Floating Charge shall rank in priority to that fixed security or floating charge.

5 UNDERTAKINGS

5.1 The Chargor hereby undertakes to the Lender that it shall carry on and conduct its business and affairs in a proper and efficient manner and, unless otherwise specifically permitted in the Facility Agreement, it shall:

5.1.1 keep all of the Secured Assets in good and sufficient repair and all plant and machinery or other moveable property in good working order and condition, in each case fair wear and tear excepted, and, where necessary for the efficient conduct of its business, renew and replace the same as and when the same shall become obsolete, worn out or destroyed (if commercially prudent to do so); and

5.1.2 pay all rents, rates, taxes, levies, assessments, impositions and outgoings whatsoever, whether governmental, municipal or otherwise, which may be imposed upon or payable in respect of the Secured Assets as and when the same shall become payable, taking into account agreed periods of grace (if any) and also punctually pay and discharge all debts and obligations which by law may have priority over this Security.

5.2 The Chargor will notify the Lender promptly of the acquisition by it of any heritable, freehold or leasehold property.

5.3 The Chargor will, if the Lender so requires, deposit with the Lender all certificates, deeds and other documents of title or evidence of ownership in relation to all or any of the Secured Assets.

6 SET-OFF

Without prejudice to any of its other rights, remedies or powers, the Lender shall be entitled to hold all sums which are now or which may at any time hereafter be at the credit of any account or accounts in the name of the Chargor with the Lender as security for the Secured Liabilities and to apply without notice to the Chargor any such sums in and towards discharge of the Secured Liabilities. The Lender shall not be obliged to exercise its rights under this Clause 6, which shall be without prejudice and in addition to any right of set-off, compensation, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise).

7 ENFORCEMENT

7.1 In addition to any statutory provisions concerning enforceability or attachment, this Security shall become enforceable upon and the Lender's powers of appointment and other rights and powers shall become exercisable at any time after:

7.1.1 the occurrence of an Early Repayment Event, which is continuing; or

7.1.2 the receipt of any request from the board of directors of the Chargor,

and the Lender may then (or as soon thereafter as permitted by law) by Instrument in writing appoint any person or persons (if more than one with power to act both jointly and separately) to be an administrator of the Chargor or (subject, if applicable, to Section 72A of the Insolvency Act 1986) a receiver of the Secured Assets. In addition, and without prejudice to the foregoing provisions of this Clause 7.1, in the event that any person appointed to be a Receiver shall be

removed by a court or shall otherwise cease to act as such, then the Lender shall be entitled so to appoint another person as Receiver in his place.

- 7.2 An Administrator shall have and be entitled to exercise, in addition to and without limiting all the powers of an administrator under the Insolvency Act 1986, all the powers of a receiver under Schedule 2 of the Insolvency Act 1986 and a Receiver shall have and be entitled to exercise, in addition to and without limiting all the powers of a receiver under Schedule 2 of the Insolvency Act 1986, all the powers of an administrative receiver set out in Schedule 1 of the Insolvency Act 1986 together with (in either case) the power to exercise any powers or rights incidental to ownership of the Secured Assets, including (as regards shares and other securities) any voting rights or rights of enforcing the same together with power to:
- 7.2.1 implement and exercise all or any of the Chargor's powers and/or rights and/or obligations under any contract or other agreement forming a part of the Secured Assets;
 - 7.2.2 make any arrangement or compromise which he shall think expedient of or in respect of any claim by or against the Chargor;
 - 7.2.3 promote or procure the formation of any new company or corporation;
 - 7.2.4 subscribe for or acquire for cash or otherwise any share, capital of such new company or corporation in the name of the Chargor and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;
 - 7.2.5 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Secured Assets or any part thereof to any such new company or corporation and accept as consideration or part of the consideration therefor in the name of the Chargor and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it, any shares or further shares in any such company or corporation or allow the payment of the whole or any part of such consideration to remain deferred or outstanding by way of loan or debt or credit;
 - 7.2.6 sell, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise on behalf of the Chargor any such shares or deferred consideration or part thereof or any rights or benefits attaching thereto;
 - 7.2.7 convene an extraordinary general meeting of the Chargor;
 - 7.2.8 acquire any property on behalf of the Chargor;
 - 7.2.9 do all such other acts and things as he may consider necessary or desirable for protecting or realising the Secured Assets, or any part thereof, or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of or pursuant to this Floating Charge and exercise in relation to the

Secured Assets, or any part thereof, all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same and use the name of the Chargor for all and any of the purposes aforesaid,

subject always to the rights of the Lender as holder of this Security.

- 7.3 To the extent that any of the Secured Assets constitutes "financial collateral" and this Floating Charge and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "**Regulations**") the Lender shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Liabilities and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be (a) in the case of cash, the amount standing to the credit of each of the relevant accounts, together with any accrued but unposted interest, at the time the right of appropriation is exercised; and (b) in the case of any shares, stocks, debentures, bonds or other securities or investments, the market price of such shares, stocks, debentures, bonds or other securities or investments determined by the Lender by reference to a public index or by such other process as the Lender may select, including independent valuation. In each case, the parties agree that the method of valuation provided for in this Floating Charge shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

8 OFFICE OF RECEIVER

- 8.1 Any Receiver appointed under Clause 7 (*Enforcement*) shall be the agent of the Chargor for all purposes and (subject to the provisions of the Insolvency Act 1986) the Chargor alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him and for his remuneration and his costs, charges and expenses and the Lender shall not incur any liability for those (either to the Chargor or any other person) by reason of the Lender making his appointment as such Receiver or for any other reason whatsoever.
- 8.2 Any Receiver appointed under Clause 7 (*Enforcement*) shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved. Subject to Section 58 of the Insolvency Act 1986, the remuneration of the Receiver may be fixed by the Lender (and may be or include a commission calculated by reference to the gross amount of all money received or otherwise and may include remuneration in connection with claims, actions or proceedings made or brought against the Receiver by the Chargor or any other person or the performance or discharge of any obligation imposed upon him by statute or otherwise) but such remuneration shall be payable by the Chargor alone and the amount of such remuneration shall form part of the Secured Liabilities and accordingly be secured on the Secured Assets under the floating charge constituted by this Floating Charge.

9 APPLICATION OF ENFORCEMENT PROCEEDS

- 9.1 All monies received by the Lender or any Receiver under or by virtue of this Floating Charge following enforcement of the security hereby granted or of any security interest constituted pursuant hereto shall be applied, subject to the claims of any creditors ranking in priority to or pari passu with the claims of the Lender under this Floating Charge, in the following order:
- 9.1.1 first, in or towards payment of all costs, charges and expenses of or incidental to the appointment of the Receiver and the exercise of all or any of his powers, including his remuneration and all outgoings paid by and liabilities incurred by him as a result of such exercise;
 - 9.1.2 secondly, in or towards satisfaction of the Secured Liabilities in such order as the Lender shall in its absolute discretion decide; and
 - 9.1.3 thirdly, any surplus shall be paid to the Chargor or any other person entitled thereto.
- 9.2 Nothing contained in this Floating Charge shall limit the right of the Receiver or the Lender (and the Chargor acknowledges that the Receiver and the Lender are so entitled) if and for so long as the Receiver or the Lender, in their discretion, shall consider it appropriate, to place all or any monies arising from the enforcement of the security interest hereby granted or any security created pursuant to this Floating Charge into a suspense account, without any obligation to apply the same or any part thereof in or towards the discharge of any of the Secured Liabilities.

10 PROTECTION OF SECURITY

- 10.1 The security created by and any security interest constituted pursuant to this Floating Charge shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever and in particular (but without prejudice to the generality of the foregoing) shall not be considered satisfied by an intermediate repayment or satisfaction of part only of the Secured Liabilities and shall continue in full force and effect until total and irrevocable satisfaction of all the Secured Liabilities.
- 10.2 The security created by and any security interest constituted pursuant to this Floating Charge shall be in addition to and shall not in any way prejudice or be prejudiced by any collateral or other security, right or remedy which the Lender may now or at any time hereafter hold for all or any part of the Secured Liabilities.
- 10.3 No failure on the part of the Lender to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Floating Charge or any other document relating to or securing all or any part of the Secured Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Floating Charge and any such other document are cumulative and not exclusive of any right or remedies provided by law.

- 10.4 Each of the provisions in this Floating Charge shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise howsoever, the validity, legality and enforceability of the remaining provisions of this Floating Charge shall not in any way be affected or impaired by that occurrence.
- 10.5 If the Lender receives or is deemed to be affected by notice, whether actual or constructive, of any subsequent security or other interest affecting any part of the Secured Assets and/or the proceeds of sale(s) thereof, the Lender may open a new account or accounts in the name of the Chargor. If the Lender does not open a new account or accounts, it shall nevertheless be treated as if it had done so at the time when it receives or was deemed to have received notice and as from that time, all payments made to the Lender shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount for which this Floating Charge is security.
- 10.6 Neither the security created by, nor any security interest constituted pursuant to, this Floating Charge nor the rights, powers, discretions and remedies conferred upon the Lender by this Floating Charge or by law shall be discharged, impaired or otherwise affected by reason of:
- 10.6.1 any present or future security, guarantee, indemnity or other right or remedy held by or available to the Lender being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Lender from time to time exchanging, varying, realising, releasing or failing to perfect or enforce any of the same; or
 - 10.6.2 the Lender compounding with, discharging or releasing or varying the liability of, or granting any time, indulgence or concession to, the Chargor or any other person or renewing, determining, varying or increasing any accommodation or transaction in any manner whatsoever or concurring in accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from the Chargor or any other person; or
 - 10.6.3 any act or omission which would not have discharged or affected the liability of the Chargor had it been a principal debtor instead of cautioner or by anything done or omitted which but for this provision might operate to exonerate the Chargor from the Secured Liabilities; or
 - 10.6.4 any legal limitation, disability, incapacity or other similar circumstance relating to the Chargor.
- 10.7 The Lender shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Floating Charge or by law, to:
- 10.7.1 take any action or obtain judgement or decree in any court against the Chargor; or

- 10.7.2 make or file any claim to rank in a winding-up or liquidation of the Chargor; or
- 10.7.3 enforce or seek to enforce any other security taken, or exercise any right or plea available to the Lender, in respect of any of the Chargor's obligations under the Facility Agreement.

11 FURTHER ASSURANCE

The Chargor shall execute and do all such assurances, acts and things as the Lender may require for perfecting or protecting the security created by or pursuant to this Floating Charge over the Secured Assets or for facilitating the realisation of such assets and the exercise of all powers, authorities and discretions conferred on the Lender or on any Receiver by this Floating Charge and shall in particular (but without limitation) promptly after being requested to do so by the Lender or any Receiver, execute all assignments and transfers (in favour of the Lender or any Receiver or to such nominee as either shall direct) of the Secured Assets which come into existence after the date of this Floating Charge and give all notices orders and directions which the Lender or any Receiver may think expedient for the purposes specified in this Clause 11.

12 MANDATE AND ATTORNEY

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

13 NOTICES

All notices, requests, demands and other communications to be given under this Floating Charge shall be given and/or be deemed to be given in the same manner as notices to be given under the Facility Agreement and the terms of clause 22 (*Notices*) of the Terms and Conditions shall apply mutatis mutandis to this Floating Charge as though that clause were set out in full in this Floating Charge.

14 RELEASE

Once the Secured Liabilities have been paid or discharged in full, the Lender shall, at the request and reasonable cost of the Chargor, take any action which is necessary to release the security created (or expressed to be created) by this Floating Charge and execute and deliver such further deeds and documents as the Chargor may reasonably require to give effect to this clause.

15 COUNTERPARTS

15.1 This Floating Charge 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 Floating Charge.

15.2 Where executed in counterparts:

15.2.1 this Floating Charge will not take effect until each of the counterparts has been delivered;

15.2.2 where any counterpart is being held as undelivered, delivery will take place only when the date of delivery is agreed between the parties after execution of this Floating Charge.

16 GOVERNING LAW AND JURISDICTION

This Floating Charge shall be governed by, and construed in all respects in accordance with, the law of Scotland and, for the benefit of the Lender, the Chargor irrevocably submits to the non-exclusive jurisdiction of the Scottish courts but without prejudice to the ability of the Lender to proceed against the Chargor in any other appropriate jurisdiction.

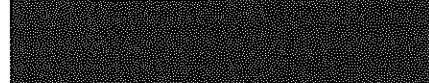
17 CONSENT TO REGISTRATION

A certificate signed by any official, manager or equivalent account officer of the Lender shall, in the absence of manifest error, conclusively determine the Secured Liabilities at any relevant time and shall constitute a balance and charge against the Chargor, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment. The Chargor hereby consents to the registration of this Floating Charge and of any such certificate for preservation and, on and after the circumstances specified in clause 7 (*Enforcement*), execution.


IN WITNESS WHEREOF these presents consisting of this and the preceding 10 pages are executed as follows and are delivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on the date set out on page 1 of this Floating Charge:

THE CHARGOR

For and on behalf of **BRAZHEAD FOODS LIMITED** by



signature of witness



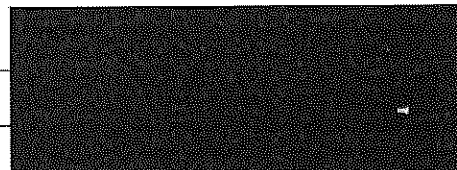
signature of director/authorised signatory

ANDREW CLARK

full name of above (print)

DAVID CRAIG STEVENSON

full name of above (print)



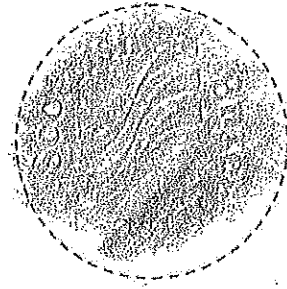
Address of witness

29 MARCH 2019

date of signing

KILMARNOCK

place of signing

THE LENDERSealed with the common seal of **SCOTTISH ENTERPRISE**and subscribed for and on behalf of **SCOTTISH ENTERPRISE** by:

signature of witness

full name of above (print)

Address of witness

signature of authorised signatory

full name of above (print)

date of signing

place of signing

CATHERINE CORR

29 MARCH 2019

GLASGOW