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COMPANIES FORM No. 466(Scot)

Particulars of an instrument of alteration to a floating charge created by a company registered in Scotland

COMPANIES HOUSE
EDINBURGH

466

28 MAY 2019

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FRONT DESK

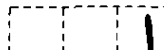
Pursuant to section 410 and 466 of the Companies Act 1985

Please complete
legibly, preferably
in black type, or
bold block lettering

To the Registrar of Companies
(Address overleaf - Note 5)

For official use

Company number



SC193995

Name of company

* Braehead Foods Limited ("Company")

* insert full name
of company

Date of creation of the charge (note 1)

29 June 2000

Description of the instrument creating or evidencing the charge or of any ancillary document which has
been altered (note 1)

Bond and Floating Charge ("RBS Floating Charge")

Names of the persons entitled to the charge

The Royal Bank of Scotland plc ("RBS")

Short particulars of all the property charged

All sums of money that now are or may at any time or times hereafter be due by the Company to RBS.

Presenter's name address and
reference (if any):

Addleshaw Goddard LLP
Exchange Tower
19 Canning Street
EH3 8EH
Ref: POUNJ/335195-13

For official use (02/06)

Charges Section

Post room

TUESDAY



SCT *S86GBDMI* #112
28/05/2019
COMPANIES HOUSE

Names, and addresses of the persons who have executed the instrument of alteration (note 2)

- (1) - RBS - 36 St Andrew Square, Edinburgh EH2 2YB;
- (2) - RBS Invoice Finance Limited - 250 Bishopsgate, London EC2M 4AA ("RBSIF");
- (3) - Scottish Enterprise - Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ ("Subordinated Creditor")
- (4) - Company - Unit 7 Moorfield North Industrial Park, Kilmarnock, Ayrshire, KA2 0FE

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legibly, preferably
in black type, or
bold block lettering*

Date(s) of execution of the instrument of alteration

(14 and 15 May 2019
Date of Delivery- 22 May 2019.

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

During the Security Period, the Company will not (and the Subordinated Creditor will not require the Company to) create or permit to subsist any security over any of its assets for all or part of the Subordinated Debt or any guarantee (or other assurance against financial loss) for or in respect of all or any part of the Subordinated Debt, in either case other than by the security or guarantees conferred by the Subordinated Security Documents entered into on or before the date of the instrument of alteration.

Please see paper apart for additional definitions

Short particulars of any property released from the floating charge

N/A

The amount, if any, by which the amount secured by the floating charge has been increased

N/A

A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

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bold block lettering*

The Creditors agree and the Company acknowledge that the charges in the Securities shall rank and all receipts, recoveries and realisations ("Realisations") pursuant to any enforcement of the Securities shall be applied in satisfying the monies, obligations and liabilities thereby secured as follows:

(a) in respect of Realisations of Non-vesting Debts, first the RBSIF Floating Charge in discharging the RBSIF Debt, secondly the RBS Floating Charge in discharging the RBS Debt and thirdly the Subordinated Floating Charge in discharging the Subordinated Debt;

(b) in respect of Realisations of the Property, first the RBS Standard Security in discharging the RBS Debt, secondly the RBS Floating Charge in discharging the RBS Debt, thirdly the RBSIF Floating Charge in discharging the RBSIF Debt and fourthly the Subordinated Floating Charge in discharging the Subordinated Debt;

(c) in respect of Realisations of all assets of the Company other than the Non-vesting Debts and the Property, first the RBS Floating Charge in discharging the RBS Debt, secondly the RBSIF Floating Charge in discharging the RBSIF Debt, thirdly the Subordinated Floating Charge in discharging the Subordinated Debt and thereafter any remaining Realisations shall be returned to the Company.

Please see paper apart for additional definitions

Continuation of the statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

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in black type, or
bold block lettering***

Signed *Erin Unvers* Date *28.5.19*
On behalf of ~~[company]~~ [chargee] **Addleshaw Goddard LLP**

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given. ☐ delete as appropriate
For the date of creation of a charge see section 410(5) of the Companies Act.
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. The address of the Registrar of Companies is: Companies Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF DX 235 Edinburgh

Additional Definitions

Creditor means each of the Senior Lenders and the Subordinated Creditor

Customer Debt means any Debt as such term is defined in the RBSIF Facility Agreement

Loan Confirmation means the loan confirmation between the Company and the Subordinated Creditor dated 5 April 2019

NatWest Markets means NatWest Markets plc (formerly named The Royal Bank of Scotland plc) (registered number SC090312) whose registered office is at 36 St Andrew Square, Edinburgh, EH2 2YB

Non-vesting Debts means any Customer Debts purchased or purported to be purchased by RBSIF pursuant to the RBSIF Facility Agreement which fail to vest absolutely in RBSIF

Property means Unit 7, Moorfield North Industrial Park, Kilmarnock KA2 0FE, registered in the Land Register of Scotland under Title Number AYR81064

RBS Debt means all or any monies and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to RBS by the Company, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not RBS shall have been an original party to the relevant transaction, and including interest, discount, commission and other lawful charges or expenses which RBS may in the course of its business charge or incur in respect of any of those matters or for keeping the Company's accounts, and so that interest shall be computed and compounded according to the usual RBS rates and practice as well after as before any demand made or decree obtained

RBS Floating Charge means the floating charge granted by the Company in favour of NatWest Markets (formerly known as The Royal Bank of Scotland plc) dated 29 June 2000 and now between the Company and RBS pursuant to the Scheme

RBS Standard Security means the standard security over the Property granted by the Company in favour of NatWest Markets (formerly known as The Royal Bank of Scotland plc) dated 10 January 2008 and now between the Company and RBS pursuant to the Scheme

RBS Security Documents means the RBS Floating Charge, the RBS Standard Security and all collateral, additional or substituted securities from time to time being held by RBS and granted by the Company as security for the payment and discharge of any part of the RBS Debt

RBSIF Debt means all or any monies and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to RBSIF by the Company, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not RBSIF shall have been an original party to the relevant transaction, and including interest, discount, commission and other lawful charges or expenses which RBSIF may in the course of its business charge or incur in respect of any of those matters or for keeping the Company's accounts, and so that interest shall be computed and compounded according to the usual RBSIF rates and practice as well after as before any demand made or decree obtained

RBSIF Facility Agreement means the invoice discounting agreement dated 5 January 2018 between RBSIF and the Company relating to certain invoice discounting facilities

RBSIF Floating Charge means the floating charge granted by the Company in favour of RBSIF dated 27 February 2012

RBSIF Security Documents means the RBSIF Floating Charge and all collateral, additional or substituted securities from time to time being held by RBSIF and granted by the Company as security for the payment and discharge of any part of the RBSIF Debt

Scheme means the order of the Court of Session under Part VII of the Financial Services and Markets Act 2000 a ring-fencing transfer scheme among RBS, NatWest Markets and National Westminster Bank

plc pursuant to which certain personal and business banking and commercial banking businesses were transferred by NatWest Markets to RBS and National Westminster Bank plc on 30 April 2018

Securities means any or all, as the context requires, of the Senior Security Documents and the Subordinated Security Documents

Security Period means the period from the date of the instrument of alteration to the date on which the Senior Debt is repaid in full and no commitment by the Senior Lenders to provide facilities to the Company remains in effect

Senior Debt means the RBS Debt and the RBSIF Debt

Senior Lenders means RBS and RBSIF

Senior Security Documents means the RBS Security Documents and the RBSIF Security Documents

Subordinated Debt means all present and future sums, liabilities and obligations (whether actual and contingent, present or future) payable or owing by the Company to the Subordinated Creditor under the Subordinated Documents

Subordinated Documents means the Subordinated Facility Agreement and the Subordinated Security Documents

Subordinated Facility Agreement means, together, the Loan Confirmation and the Terms and Conditions

Subordinated Floating Charge means the floating charge granted by the Company in favour of the Subordinated Creditor dated 5 April 2019

Subordinated Security Documents means:

(a) the Subordinated Floating Charge and

(b) all collateral, additional or substituted securities from time to time being held by the Subordinated Creditor and granted by the Company (in accordance with the terms of the instrument of alteration) as security for the payment and discharge of any part of the Subordinated Debt

Terms and Conditions means the Subordinated Creditor's standard loan terms and conditions, from time to time



FILE COPY

**CERTIFICATE OF THE REGISTRATION
OF AN ALTERATION TO A FLOATING CHARGE**

COMPANY NO. 193995

CHARGE NO. 1

**I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 22 MAY 2019 WERE DELIVERED
PURSUANT TO SECTION 410 OF THE COMPANIES ACT 1985
ON 28 MAY 2019**

**THE INSTRUMENT RELATES TO A CHARGE CREATED ON 29
JUNE 2000**

BY BRAEHEAD FOODS LIMITED

**IN FAVOUR OF
THE ROYAL BANK OF SCOTLAND PLC**

FOR SECURING ALL SUMS DUE OR TO BECOME DUE

GIVEN AT COMPANIES HOUSE, EDINBURGH 30 MAY 2019



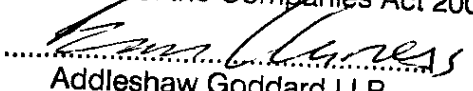
Dated 22 May 2019

THE ROYAL BANK OF SCOTLAND PLC

RBS INVOICE FINANCE LIMITED

SCOTTISH ENTERPRISE

BRAEHEAD FOODS LIMITED

Certified as a true copy of
the original subject to the
exclusion of personal
information permitted by
Section 859G of the Companies Act 2006

Addleshaw Goddard LLP

INTERCREDITOR
AGREEMENT

Contents

Clause		Page
1	Definitions and interpretation.....	1
2	Consents and agreements	5
3	Ranking of Debts	5
4	Ranking of Securities.....	6
5	Undertakings	7
6	Permitted Payments	8
7	Continuing security	9
8	Enforcement of security.....	9
9	Insolvency proceedings	10
10	Waiver of defences.....	11
11	Credits to Company's Accounts with RBS	12
12	Termination.....	12
13	The Company's acknowledgements	12
14	Information.....	13
15	Entire Agreement.....	13
16	Waivers and consents	13
17	Variations.....	13
18	Severability	14
19	Facilities.....	14
20	Transfer and accession	14
21	Time and indulgence	14
22	Compensation	14
23	Notices.....	14
24	Counterparts and delivery	15
25	Law and jurisdiction	16
The Schedule		
	Deed of Accession.....	19

This Intercreditor Agreement is delivered on

22 May

2019

Between

- (1) **The Royal Bank of Scotland plc** (No. SC083026) whose registered office is at 36 St Andrew Square, Edinburgh EH2 2YB (**RBS**);
- (2) **RBS Invoice Finance Limited**, (No. 00662221) whose registered office is at 250 Bishopsgate, London EC2M 4AA (**RBSIF**);
- (3) **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 (**Subordinated Creditor**); and
- (4) **Braehead Foods Limited**, (No. SC193995) whose registered office is at Unit 7 Moorfield North Industrial Park, Kilmarnock, Ayrshire, KA2 0FE (**Company**).

It is agreed

1 Definitions and interpretation

- 1.1 In this Agreement, except where the context otherwise requires, each of the expressions set out below shall have the following meanings:

Administrator means has the same meaning as in Schedule B1 to the Insolvency Act 1986

Contract of Sale has the meaning given to that term in the RBSIF Facility Agreement

Creditor means each of the Senior Lenders and the Subordinated Creditor

Customer means a party under a Contract of Sale obliged to pay to the Company the invoice and, where the context so permits, a prospective Customer

Customer Debt means any Debt as such term is defined in the RBSIF Facility Agreement

Debt means the Senior Debt and the Subordinated Debt

Deed of Accession means a deed of accession in favour of the Senior Lenders substantially in the form set out in the Schedule (or as otherwise approved by the Senior Lenders in writing)

Enforcement Action means any action whatsoever to:

- (a) demand payment of, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand, all or any part of the Subordinated Debt
- (b) recover all or any part of the Subordinated Debt (including, without limitation, by exercising any right of set-off or combination of accounts)
- (c) exercise or enforce any security right or rights against guarantors or sureties or any other rights under any other document or agreement in relation to (or given in support of) all or any part of the Subordinated Debt (including, without limitation, under the Subordinated Security Documents)
- (d) petition for (or take any other steps or action which may lead to) an Insolvency Event in relation to the Company or

- (e) commence legal proceedings against the Company

Insolvency Event means:

- (a) any application, notice, resolution or order is made, passed or given for or in connection with the winding up, liquidation, dissolution, administration or reorganisation of the Company
- (b) the Company becomes subject to any insolvency, reorganisation, receivership (whether relating to all or some only of its assets), liquidation, dissolution or other similar proceedings, whether voluntary or involuntary and whether or not involving insolvency
- (c) the Company assigns all or any of its assets for the benefit of its creditors generally (or any class thereof) or enters into any composition or arrangement with its creditors generally or any arrangement is ordered or declared by a court of competent jurisdiction whereby all or any of its affairs and/or assets are submitted to the control of, or are protected from, its creditors
- (d) the Company becomes subject to any distribution of its assets in consequence of insolvency, reorganisation, liquidation, dissolution or administration or
- (e) any event analogous to any of the foregoing shall occur in relation to the Company or any of its assets in any jurisdiction

Loan Confirmation means the loan confirmation between the Company and the Subordinated Creditor dated 5 April 2019

NatWest Markets means NatWest Markets plc (formerly named The Royal Bank of Scotland plc) (registered number SC090312) whose registered office is at 36 St Andrew Square, Edinburgh, EH2 2YB

Non-vesting Debts means any Customer Debts purchased or purported to be purchased by RBSIF pursuant to the RBSIF Facility Agreement which fail to vest absolutely in RBSIF

Permitted Payments means a scheduled payment of interest and/or capital by the Company when due and payable pursuant to the Subordinated Facility Agreement

Property means Unit 7, Moorfield North Industrial Park, Kilmarnock KA2 0FE, registered in the Land Register of Scotland under Title Number AYR81064

Purchased Debts means all or any of the Customer Debts together with their Related Rights (as defined in the RBSIF Facility Agreement) which are purchased or the ownership of which are assigned or are intended to be assigned to RBSIF pursuant to the RBSIF Facility Agreement

RBS Debt means all or any monies and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to RBS by the Company, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not RBS shall have been an original party to the relevant transaction, and including interest, discount, commission and other lawful charges or expenses which RBS may in the course of its business charge or incur in respect of any of those matters or for keeping the Company's accounts, and so that interest shall be computed and compounded according to the usual RBS rates and practice as well after as before any demand made or decree obtained

RBS Default means an Event of Default (as defined in the RBS Facility Agreement) or any other event of default (however described) in the RBS Documents

RBS Discharge Date means the first date on which all RBS Debt has been fully repaid and discharged to RBS whether or not as the result of enforcement, and RBS is under no further obligation to provide finance to the Company under any of the RBS Documents

RBS Documents means the RBS Facility Agreement, the RBS Security Documents and any other agreement, deed, letter or instrument entered into between RBS and the Company setting out the terms of the RBS Debt

RBS Facility Agreement means the facility agreement originally between RBS and the Company relating to certain term loan facilities dated 16 January 2019

RBS Floating Charge means the floating charge granted by the Company in favour of NatWest Markets (formerly known as The Royal Bank of Scotland plc) dated 29 June 2000 and now between the Company and RBS pursuant to the Scheme

RBS Standard Security means the standard security over the Property granted by the Company in favour of NatWest Markets (formerly known as The Royal Bank of Scotland plc) dated 10 January 2008 and now between the Company and RBS pursuant to the Scheme

RBS Security Documents means the RBS Floating Charge, the RBS Standard Security and all collateral, additional or substituted securities from time to time being held by RBS and granted by the Company as security for the payment and discharge of any part of the RBS Debt

RBSIF Debt means all or any monies and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to RBSIF by the Company, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not RBSIF shall have been an original party to the relevant transaction, and including interest, discount, commission and other lawful charges or expenses which RBSIF may in the course of its business charge or incur in respect of any of those matters or for keeping the Company's accounts, and so that interest shall be computed and compounded according to the usual RBSIF rates and practice as well after as before any demand made or decree obtained

RBSIF Default means any decision by RBSIF to demand immediate repayment of the RBSIF Debt

RBSIF Documents means the RBSIF Facility Agreement, the RBSIF Security Documents and any other agreement, deed, letter or instrument entered into between RBSIF and the Company setting out the terms of the RBSIF Debt

RBSIF Facility Agreement means the invoice discounting agreement dated 5 January 2018 between RBSIF and the Company relating to certain invoice discounting facilities

RBSIF Floating Charge means the floating charge granted by the Company in favour of RBSIF dated 27 February 2012

RBSIF Security Documents means the RBSIF Floating Charge and all collateral, additional or substituted securities from time to time being held by RBSIF and granted by the Company as security for the payment and discharge of any part of the RBSIF Debt

Receiver means an administrative receiver, a receiver and manager or a receiver

Related Rights has the meaning given to that term in the RBSIF Facility Agreement

Schedule means the schedule annexed as relative hereto

Scheme means the order of the Court of Session under Part VII of the Financial Services and Markets Act 2000 a ring-fencing transfer scheme among RBS, NatWest Markets and National Westminster Bank plc pursuant to which certain personal and business banking and commercial banking businesses were transferred by NatWest Markets to RBS and National Westminster Bank plc on 30 April 2018

Securities means any or all, as the context requires, of the Senior Security Documents and the Subordinated Security Documents

Security Period means the period from the date of this Agreement to the date on which the Senior Debt is repaid in full and no commitment by the Senior Lenders to provide facilities to the Company remains in effect

Senior Debt means the RBS Debt and the RBSIF Debt

Senior Documents means the RBS Documents and the RBSIF Documents

Senior Floating Charges means the RBS Floating Charge and the RBSIF Floating Charge

Senior Lenders means RBS and RBSIF

Senior Security Documents means the RBS Security Documents and the RBSIF Security Documents

Subordinated Facility Agreement means, together, the Loan Confirmation and the Terms and Conditions

Subordinated Floating Charge means the floating charge granted by the Company in favour of the Subordinated Creditor dated 5 April 2019

Subordinated Security Documents means:

- (a) the Subordinated Floating Charge and
- (b) all collateral, additional or substituted securities from time to time being held by the Subordinated Creditor and granted by the Company (in accordance with the terms of this Agreement) as security for the payment and discharge of any part of the Subordinated Debt

Subordinated Debt means all present and future sums, liabilities and obligations (whether actual and contingent, present or future) payable or owing by the Company to the Subordinated Creditor under the Subordinated Documents

Subordinated Documents means the Subordinated Facility Agreement and the Subordinated Security Documents

Terms and Conditions means the Subordinated Creditor's standard loan terms and conditions, from time to time

Trust Account means any bank account in the name of the Company designated in trust for RBSIF for the purposes of the RBSIF Facility Agreement

- 1.2 In this Agreement, unless the context otherwise requires:
- (a) references to the parties shall be construed so as to include their respective successors and permitted assigns;
 - (b) references to a **business day** shall be construed as a reference to a day (other than a Saturday or a Sunday) on which banks are generally open for the transaction of business in Pounds Sterling in London;
 - (c) references to clauses are references to clauses of this Agreement;
 - (d) references to this **Agreement**, any document or any other agreement shall be to this Agreement or such document or other agreement as the same is amended, varied, supplemented or novated from time to time;
 - (e) headings are inserted for ease of reference only and shall be ignored in the construction of this Agreement;
 - (f) references to any statute or law shall be to such statute or law as re-enacted, amended, extended or replaced from time to time; and
 - (g) the singular includes the plural and vice versa and any gender includes the other.
- 1.3 If there is any conflict or inconsistency between any provision of this Agreement and any provision contained within a Security, the provisions of this Agreement shall prevail.

2 Consents and agreements

- 2.1 Insofar as consent is required under the terms of the Securities or otherwise, each Creditor hereby confirms its consent to the creation and continuance of the Securities in favour of each other Creditor.
- 2.2 RBS and the Subordinated Creditor consent to the Company's entry into the RBSIF Facility Agreement and the assignments and/or assignations of Customer Debts by the Company under the RBSIF Facility Agreement and agree that Customer Debts which vest in RBSIF under the RBSIF Facility Agreement (whether by way of assignation, holding in trust or otherwise) are released from the RBS Security Documents and the Subordinated Security Documents.
- 2.3 RBS and the Subordinated Creditor consent to the Company opening a Trust Account and agrees that the Company shall not be entitled to withdraw funds from such account other than by payment to RBSIF.

3 Ranking of Debts

- 3.1 The Debt shall rank for all purposes and at all times in the following order of priority:
- (a) first, the Senior Debt; and
 - (b) second, the Subordinated Debt.
- 3.2 RBS, the Subordinated Creditor and the Company agree and acknowledge to RBSIF that the proceeds of any Customer Debt whenever created constitute a realisation of a Customer Debt payable to RBSIF and such proceeds are not a realisation of any other asset of the Company

3.3 A certificate signed by a duly authorised signatory of RBS will, except in the case of manifest error, be conclusive evidence of the amount of the RBS Debt which is outstanding.

3.4 A certificate signed by a duly authorised signatory of RBSIF will, except in the case of manifest error, be conclusive evidence of the amount of the RBSIF Debt which is outstanding

4 Ranking of Securities

4.1 The Creditors agree and the Company acknowledge that the charges in the Securities shall rank and all receipts, recoveries and realisations (**Realisations**) pursuant to any enforcement of the Securities shall be applied in satisfying the monies, obligations and liabilities thereby secured as follows:

- (a) in respect of Realisations of Non-vesting Debts, first the RBSIF Floating Charge in discharging the RBSIF Debt, secondly the RBS Floating Charge in discharging the RBS Debt and thirdly the Subordinated Floating Charge in discharging the Subordinated Debt;
- (b) in respect of Realisations of the Property, first the RBS Standard Security in discharging the RBS Debt, secondly the RBS Floating Charge in discharging the RBS Debt, thirdly the RBSIF Floating Charge in discharging the RBSIF Debt and fourthly the Subordinated Floating Charge in discharging the Subordinated Debt;
- (c) in respect of Realisations of all assets of the Company other than the Non-vesting Debts and the Property, first the RBS Floating Charge in discharging the RBS Debt, secondly the RBSIF Floating Charge in discharging the RBSIF Debt, thirdly the Subordinated Floating Charge in discharging the Subordinated Debt and thereafter any remaining Realisations shall be returned to the Company.

4.2 The amount of any Administrator's or Receiver's remuneration and all outgoings, costs, charges, expenses, liabilities and payments ranking by statute for payment in priority to the amount secured by the Securities shall be deducted from all receipts and recoveries under the Security under which he is appointed prior to their application towards the discharge or satisfaction of the amount secured by the Securities.

4.3 For the purposes of the Insolvency Act 1986 the Creditors hereby confirm that any qualifying floating charges within the meaning of paragraph 14 of Schedule B1 to the Insolvency Act 1986 contained in the Securities shall rank in the order set out in clause 4.1 notwithstanding the date of creation of such floating charges.

4.4 The Subordinated Creditor agrees and acknowledges to the Senior Lenders that notwithstanding the terms of this Agreement or the dates of creation of the floating charges created under the Securities:

- (a) the Senior Floating Charges constitute prior floating charges for the purposes of paragraph 15 of Schedule B1 to the Insolvency Act 1986; and
- (b) the Subordinated Floating Charge shall not constitute a prior floating charge for the purposes of paragraph 15 of Schedule B1 to the Insolvency Act 1986.

4.5 Nothing contained within this Agreement is intended to rank any floating charge in the Securities before any fixed charge in the Securities. If the result of the operation of clause 4.1 is to:

- (a) rank a floating charge ahead of a fixed charge; or

- (b) cause any surplus proceeds of realisation of a fixed charge to fall due to a floating chargeholder;

then, the parties agree that in the circumstances contemplated by clause 4.5(a) the floating charge shall be postponed to the fixed charge and that in both cases the holder of that fixed charge (and the Company) agrees that:

- (c) all Realisations from its fixed charge shall be applied in the order set out in clause 4.1; and
- (d) it (and any Administrator or Receiver) will hold any Realisations from its fixed charge on trust for the Creditors to be applied in the order set out in clause 4.1.

- 4.6 No Creditor shall be entitled to the proceeds of realisation from any assets over which it does not hold effective security.

5 Undertakings

- 5.1 During the Security Period, the Company will not (and the Subordinated Creditor will not require the Company to):

- (a) create or permit to subsist any security over any of its assets for all or part of the Subordinated Debt or any guarantee (or other assurance against financial loss) for or in respect of all or any part of the Subordinated Debt, in either case other than by the security or guarantees conferred by the Subordinated Security Documents entered into on or before the date of this Agreement;
- (b) pay, repay, prepay, redeem, purchase or otherwise discharge or release any of the Subordinated Debt, other than in respect of any Permitted Payments made in accordance with the terms of clause 6 (Permitted Payments);
- (c) amend any of the terms of the Subordinated Documents, save with the prior written consent of the Senior Lenders;
- (d) discharge any of the Subordinated Debt by set-off or any right of combination of accounts save only to the extent it may be required to do so or if the same occurs automatically by operation of law (but not, in either case, by reason of any contract or agreement);
- (e) give any financial support to any person to enable it to do any of the things referred to in clause 5.1(a) to 5.1(d) (inclusive); or
- (f) take or omit to take any action whereby the ranking and/or subordination arrangements provided for herein in relation to the Subordinated Debt or any part thereof may be impaired or adversely affected.

- 5.2 During the Security Period, the Subordinated Creditor will not:

- (a) demand or (except in respect of any Permitted Payment made in accordance with the terms of clause 6 (Permitted Payments)) accept payment, repayment, prepayment or any distribution in respect of, or on account of, any Subordinated Debt in cash or in kind or accelerate, declare payable on demand or enforce by execution or otherwise any

principal, interest, cost or other sums in respect of the Subordinated Debt or part thereof;

- (b) exercise any right of set-off, combination of accounts or lien or exercise or accept any transfer of rights, property or assets from the Company (or any other source) in satisfaction of the Subordinated Debt or part thereof;
- (c) claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of the Company, other than in accordance with clause 9 (Insolvency proceedings);
- (d) take, receive or permit to subsist any security right or any guarantee (or other assurance against financial loss) for, or in respect of, any Subordinated Debt, other than in terms of the Subordinated Security Documents entered into on or before the date of this Agreement;
- (e) amend, vary, waive or release any provision of the Subordinated Documents in any way which (i) in the opinion of RBS, is likely to have an adverse effect upon the interests of RBS in relation to the RBS Debt; or (ii) in the opinion of RBSIF, is likely to have an adverse effect upon the interests of RBSIF in relation to the RBSIF Debt;
- (f) take any Enforcement Action involving the Company, other than in terms of clause 8 (Enforcement of security);
- (g) take or omit to take any action whereby the ranking and/or subordination arrangements provided for herein in relation to the Subordinated Debt or any part thereof may be impaired or adversely affected.

5.3 During the Security Period, the Subordinated Creditor undertakes to the Senior Lenders that it shall comply with its obligations under this Agreement and (subject to such obligations) the Subordinated Documents.

6 Permitted Payments

6.1 Prior to the RBS Discharge Date, the Company may make Permitted Payments when the same are due and payable provided that as at the date on which such a payment is to be made:

- (a) all financial information required to be delivered in terms of the Senior Documents has been received by the Senior Lenders; and
- (b) no breach of any terms of the Senior Documents has occurred or is likely to occur as a result of such payment being made.

6.2 Following the RBS Discharge Date but prior to the RBSIF Discharge Date, the Company may make Permitted Payments when the same are due and payable provided that as at the date on which such a payment is to be made:

- (a) all financial information required to be delivered in terms of the RBSIF Facility Agreement has been received by RBSIF; and
- (b) no breach of any terms of the RBSIF Facility Agreement has occurred or is likely to occur as a result of such payment being made.

7 Continuing security

- 7.1 The Securities shall be continuing securities for repayment to the Creditors of the money and liabilities thereby secured and the priority arrangements herein contained shall not be affected by the date(s) of any advances made to the Company by any of the Creditors, by any fluctuations in the amount from time to time due owing or incurred by the Company to any of the Creditors or by the existence at any time of a credit or nil balance on any relevant account of the Company with any Creditor.
- 7.2 The provisions of this Agreement shall apply and the Securities shall be given effect in accordance with the terms of this Agreement notwithstanding (i) the date(s) of their creation, registration or intimation or (ii) the provisions of Sections 464 or 466 of the Companies Act 1985. The Securities are hereby varied to the extent specified in this Agreement and this Agreement shall be construed and receive effect as an instrument of alteration within the meaning of Section 466 of the Companies Act 1985.

8 Enforcement of security

8.1 Enforcement by RBS

- (a) Subject to the terms of clause 8.1(b) below, RBS may take Enforcement Action at any time in accordance with the provisions of the RBS Finance Documents and shall not be responsible to RBSIF or the Company for any Enforcement Action or any failure to take Enforcement Action or to maximise the proceeds of any enforcement of the RBS Security and RBS may cease any such enforcement at any time.
- (b) RBS may only take Enforcement Action in accordance with clause 8.1(a) above if any RBS Default has occurred and:
- (i) RBS has given notice to RBSIF in writing of the occurrence of such RBS Default (**RBS Enforcement Notice**);
 - (ii) a period of not less than 5 Business Days (**RBS Standstill Period**) has elapsed from the date RBSIF received the RBS Enforcement Notice; and
 - (iii) the RBS Default in question is continuing and has not been remedied or waived in writing by RBS on or prior to the end of the RBS Standstill Period.

8.2 Enforcement by RBSIF

- (a) RBSIF may only take any Enforcement Action at any time prior to the RBS Discharge Date if:
- (i) the prior written consent of RBS is obtained; or
 - (ii) RBS has taken any steps to enforce the RBS Security Documents; or
 - (iii) the following have occurred:
 - (A) an RBSIF Default has occurred;
 - (B) RBSIF has given notice to RBS (**RBSIF Enforcement Notice**) of the occurrence of such RBSIF Default;

- (C) a period of not less than 5 Business Days (**RBSIF Standstill Period**) has elapsed from the date RBS received the RBSIF Enforcement Notice; and
- (D) the RBSIF Default in question is continuing and has not been remedied or waived in writing by RBSIF on or prior to the end of the RBSIF Standstill Period.

8.3 Benefit of RBS and RBSIF Enforcement Provisions

The obligations and rights of the Senior Lenders pursuant to Clauses 8.1 and 8.2 are given to and for the benefit of the Senior Lenders only and are not enforceable by any other party to this Agreement.

8.4 Enforcement by the Subordinated Creditor

- (a) Subject to Clause 8.4(c) below and prior to the RBS Discharge Date, the Subordinated Creditor shall not take any Enforcement Action prior to the expiry of the Security Period without the prior written consent of the Senior Lenders;
- (b) Subject to Clause 8.4(c) below and following the RBS Discharge Date but prior to the RBSIF Discharge Date, the Subordinated Creditor shall not take any Enforcement Action prior to the expiry of the Security Period without the prior written consent of RBSIF;
- (c) The restrictions in Clause 8.4(a) and 8.4(b) above, shall not apply to the Subordinated Creditor if:
 - (i) a court makes a winding-up order or an order for the dissolution or liquidation of the Company or a liquidator or an Administrator or equivalent is appointed to the Company, other than in any such case as a result of action taken by (or on behalf of) of the Subordinated Creditor; and
 - (ii) either of the Senior Lenders has enforced the security conferred by the Senior Security Documents (or any of them) granted by the Company other than by the exercise by either of the Senior Lenders of any set-off or similar rights.

9 Insolvency proceedings

9.1 If an Insolvency Event occurs in respect of the Company during the Security Period then:

- (a) the Subordinated Debt will be postponed and subordinated to the Senior Debt and (if required by either RBS or RBSIF but not otherwise) the Subordinated Creditor will file any proof or other claim necessary for the recovery of the Subordinated Debt;
- (b) any payment or distribution of any kind or character and all and any rights in respect of such payment or distribution, whether in cash, securities or other property, which is payable or deliverable upon or with respect to all or part of the Subordinated Debt by a liquidator, Administrator, or Receiver (or equivalent) of the Company or its estate made or paid to or received by the Subordinated Creditor or to which the Subordinated Creditor is entitled, will be held in trust by its recipient for the Senior Lenders and will immediately be paid or, transferred or assigned to RBS for application in the order set out in clause 4 (Ranking of Securities) of this Agreement; and

- (c) if the trust referred to in clause 9.1(b) fails or cannot be given effect to, the Subordinated Creditor (and any agent or trustee on their behalf) receiving any such payment or distribution will pay an amount equal to such payment or distribution to RBS for application in the order set out in clause 4 (Ranking of Securities) of this Agreement.

9.2 If, prior to the expiry of the Security Period, the Subordinated Creditor receives or recovers any proceeds of Enforcement Action or a payment or distribution in respect of the Subordinated Debt (other than (i) a Permitted Payment made in accordance with clause 6 (Permitted Payments); or (ii) in accordance with the ranking set out in clause 4 (Ranking of Securities)), it will promptly pay such amount to RBS for application in the order set out in clause 4 (Ranking of Securities) after deducting the costs, liabilities and expenses (if any) reasonably and properly incurred by the Subordinated Creditor in recovering or receiving such payment and, pending such payment, will hold these amounts and distributions on trust (or otherwise separated from its assets) on behalf of the Senior Lenders (and the Senior Lenders acknowledges notice of such trust).

10 Waiver of defences

10.1 The subordination effected or intended to be effected by this Agreement and the obligations of the Subordinated Creditor under it shall not be affected by any act, omission or circumstances which but for this provision might operate to release the Subordinated Creditor from its obligations or affect such obligations or such subordination including, without limitation and whether or not known to the Subordinated Creditor or any other person:

- (a) any time, indulgence or waiver granted to, or composition with the Company or any other person;
- (b) the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or enforce, any rights, remedies or securities against or granted by the Company or any other person;
- (c) any unenforceability, illegality, invalidity or frustration of any obligation of the Company under the Senior Documents or of any other person under any other document;
- (d) any amendment to or variation of the terms of the Senior Documents or any other document;
- (e) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Company under any of the Senior Documents resulting from any insolvency, liquidation or dissolution proceedings or from any law or regulation.

10.2 This Agreement shall apply in respect of the Senior Debt irrespective of any intermediate payment of any of the Senior Debt and shall apply to the ultimate balance of the Senior Debt.

10.3 Notwithstanding any of the provisions of this Agreement postponing, subordinating or delaying the payment of all or any of the Subordinated Debt, such Subordinated Debt shall as between the Company and the Subordinated Creditor remain owing or due and payable in accordance with the terms of the Subordinated Documents.

11 Credits to Company's Accounts with RBS

- 11.1 Notwithstanding (i) the terms of any charge on the Customer Debts contained in the RBSIF Floating Charges and (ii) any covenant in the RBSIF Floating Charge or in the RBSIF Facility Agreement or any other request or instruction, by the Company to RBS to pay the proceeds of any Customer Debts into the Company's account with RBSIF or with RBS or some other bank, RBSIF and the Company agree that RBS may accept any payment or collect any cheque or other instrument for credit to the Company's account with RBS and shall not be obliged to pay any sum to RBSIF unless:
- (a) prior to the receipt of such credit RBS has received notice in writing from RBSIF that a credit represents the proceeds of Purchased Debts;
 - (b) RBS has deliberately procured the payment to RBS of a sum which to RBS' knowledge should have been paid to RBSIF.
- 11.2 The notice in writing under clause 11.1 is to be treated as RBSIF's requirement that the whole or the applicable part of such credit shall be held by RBS only to the order of RBSIF and paid to it upon demand and RBS will make no further enquiries of RBSIF or seek any other authorisation from the Company to pay RBSIF.
- 11.3 In respect of any credit balance from time to time on any account of the Company with RBS to which no claim has been made by RBSIF under clause 11.1 it is agreed that RBS may permit the Company to draw upon such credit balance and may at any time apply set-off or permit to be applied set-off against any such credit balance in reduction or discharge of or against the whole of the Company's RBS Debt.
- 11.4 At any time RBSIF may advise RBS that the whole or any part of the credit balance referred to in clause 11.3 represents collections due from debtors under Purchased Debts.
- 11.5 Upon receipt of an advice under clause 11.4 RBS' rights under clause 11.3 shall remain unaffected but the Company shall not be permitted to draw upon such credit balance until a further notice authorising such withdrawals has been given to RBS by RBSIF.
- 11.6 The rights set out in this Clause 0 shall not affect RBSIF's right of tracing against the Company.

12 Termination

This Agreement shall cease to have effect when all of the Securities of the Creditors shall have been fully discharged.

13 The Company's acknowledgements

- 13.1 The Company acknowledges and consents to the ranking of the Securities herein recorded.
- 13.2 The Company acknowledges that this Agreement does not create any rights in its favour and that it shall not be entitled to enforce any of the terms of this Agreement against any of the Creditors.

14 Information

- 14.1 Whilst this Agreement subsists the Senior Lenders and the Subordinated Creditor may from time to time disclose to the other information concerning the Company and its affairs in such manner and to such extent as such Creditor shall from time to time think fit. The Company consents to such disclosure.
- 14.2 Each Creditor acknowledges the right of the other Creditor to the production and delivery of copies of the documents comprising or referred to in its Security.
- 14.3 If, prior to the RBS Discharge Date, an RBS Default either occurs or ceases to be continuing RBS shall, upon becoming aware of that occurrence or cessation, notify RBSIF and the Subordinated Creditor.
- 14.4 If, following the RBS Discharge Date but prior to the RBSIF Discharge Date, an RBSIF Default either occurs or ceases to be continuing RBSIF shall, upon becoming aware of that occurrence or cessation, notify the Subordinated Creditor.

15 Entire Agreement

- 15.1 This Agreement forms the entire agreement between the parties relating to the priority of their respective Securities and the application of the proceeds thereof and supersedes all previous ranking agreements of any kind between all or any of the Creditors in respect of all or any of the Securities, all earlier meetings, discussions, correspondence, e-mails, facsimile transmissions, letters and communications, understandings and arrangements of any kind so relating.

16 Waivers and consents

- 16.1 No forbearance or failure by any party to exercise or assert or claim any right or entitlement hereunder shall be construed (in the absence of a written agreement to waive or a written confirmation of a past waiver) as a waiver of that right or entitlement.
- 16.2 No waiver of any breach of any term of this Agreement shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.
- 16.3 None of the terms of this Agreement is enforceable by any person other than a Creditor and their respective successors in title. No purchaser dealing with any of the Creditors or any Administrator or Receiver shall be concerned in any way with the provisions of this Agreement and shall assume that the Creditors or any such Administrator or Receiver is acting in accordance with the provisions of this Agreement.
- 16.4 If, at any time, the Senior Lenders grant any consent, approval, release or waiver under the Senior Documents, the Subordinated Creditor shall be deemed to have given an equivalent consent, release or waiver under the Subordinated Documents.

17 Variations

Any variation of this Agreement shall be binding only if it is recorded in a document signed by or on behalf of each Creditor.

18 Severability

The provisions of this Agreement shall be severable and distinct from each other and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of each of the remaining provisions of this Agreement shall not in any way be affected, prejudiced or impaired thereby.

19 Facilities

Nothing contained in this Agreement shall bind any Creditor to make any advance or prepayment or to grant any credit or other facilities to the Company.

20 Transfer and accession

20.1 The Company shall not be entitled to assign or transfer all or any of its rights, benefits or obligations under this Agreement.

20.2 RBS may at any time assign all or any of its respective rights and benefits under this Agreement to any party to whom RBS transfers or assigns all or any part of the RBS Debt.

20.3 RBSIF may at any time assign all or any of its respective rights and benefits under this Agreement to any party to whom RBSIF transfers or assigns all or any part of the RBSIF Debt.

20.4 It is agreed that the Subordinated Creditor may sell, transfer or otherwise dispose of all or any part of its Subordinated Debt to any person provided such purchaser or transferee of any of the Subordinated Debt enters into a Deed of Accession at or prior to the completion of such sale or transfer.

21 Time and indulgence

Each Creditor shall be entitled to grant time or indulgence or to release or compound with the Company or otherwise deal with its Security without reference to the other Creditors except to the extent regulated by this Agreement.

22 Compensation

The Creditors hereby agree that, if this Agreement is regarded by any one or more liquidators, Receivers or Administrators of the Company as failing to bind him or them, any party or parties who will have benefited as a result of any action by any one or more of such liquidators, Receivers or Administrators will forthwith compensate the party or parties who will have been correspondingly prejudiced to the extent of the provisions as to ranking set out in clause 4 (Ranking of Securities).

23 Notices

23.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing.

23.2 Any such notice or other communication shall, subject to clause 23.4, be addressed to the relevant party at its address stated below in relation to each party:

(a) in the case of RBS:

Address:

Level 3 Kirkstane House, 139 St Vincent Street,
Glasgow G2 5JF

Marked for the attention of: Alan Poole

(b) in the case of RBSIF:

Address: Level 3 Kirkstane House, 139 St Vincent Street,
Glasgow G2 5JF

Marked for the attention of: Matthew Thompson

(c) in the case of the Subordinated Creditor:

Address: Atrium Court, 50 Waterloo Street, Glasgow, G2 6HQ

Marked for the attention of: Derek Shaw

(d) in the case of the Company, its registered office address for the time being marked for the attention of David Craig Stevenson.

23.3 Provided a notice is addressed in accordance with clause 23.2, it shall be deemed to have been duly given or made as follows:

- (a) if sent by personal delivery, upon delivery at the address of the relevant party;
- (b) if sent by first class pre-paid letter post, 2 clear business days after the date of posting;
- (c) if sent by facsimile transmission, it shall be deemed to have been received by the addressee as soon as sent, save that if it is sent outside the addressee's normal business hours on a day which is not a working day in the place of receipt it shall be deemed to have been received at 10am on the next following working day.

23.4 A party may notify the other parties to this Agreement of a change to its name or address for the purposes of clause 23.2 provided that such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place;
or
- (b) if no date is specified or the date specified is less than 5 clear business days after the date on which notice is given, the date falling 5 clear business days after notice of any such change has been given.

23.5 For the avoidance of doubt, the parties agree that the provisions of this clause shall not apply in relation to the service of any document by which any legal proceedings are commenced or continued or forming any part of such proceedings.

24 Counterparts and delivery

24.1 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts.

24.2 Where executed in counterpart:

- (a) this Agreement shall not take effect until all of the counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and

EXECUTION VERSION

- (c) the parties may choose to evidence the date of delivery of this Agreement by inserting this on the front page of this Agreement.

24.3 If this Agreement is not executed in counterparts, this Agreement shall be delivered on the date inserted on the front page of this Agreement or, if no such date is inserted, the date on which the last party signed this Agreement.

24.4 The parties to this Agreement, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery)(Scotland) Act 2015 (**Counterparts Act**), nominate Addleshaw Goddard LLP to take delivery of all counterparts of this Agreement. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Agreement.

25 Law and jurisdiction

25.1 This Agreement is governed by, and shall be construed in accordance with, Scots law.

25.2 The parties to this Agreement irrevocably submit to the exclusive jurisdiction of the Scottish courts to settle any disputes which may arise out of or in connection with this Agreement.

In witness whereof this and the preceding 15 pages together with the Schedule attached hereto are executed as follows

Subscribed for and on behalf of
The Royal Bank of Scotland plc
at GLASGOW
on 14th MAY 2019.


Authorised Signatory

.....
Full Name

in the presence of

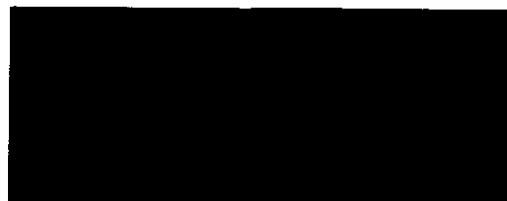
Witness signature



Full name

.....
DANIELLE TOAL

Address



EXECUTION VERSION

Subscribed for and on behalf of
RBS Invoice Finance Limited
at ROTHESHAM
on 15 MAY 2019

[Redacted Signature]

Authorised Signatory

CLAIRE GARDIEY

Full Name

in the presence of

[Redacted Signature]

Witness signature

Full name

STEPHEN KERR

Address

[Redacted Address]

Sealed with the common seal of **Scottish Enterprise**

and subscribed for and on behalf of
Scottish Enterprise
at
on

.....
Authorised Signatory

.....
Full Name

in the presence of

Witness signature

.....

Full name

.....

Address

.....

.....

.....

EXECUTION VERSION

Subscribed for and on behalf of
RBS Invoice Finance Limited
at
on

.....
Authorised Signatory

.....
Full Name

in the presence of

Witness signature

Full name

Address

Sealed with the common seal of **Scottish Enterprise**

and subscribed for and on behalf of
Scottish Enterprise
at **GLASGOW**
on **14 MAY 2019**

.....
Authorised Signatory

.....
Full Name

CATHERINE MARY CONN

in the presence of

Witness signature

Full name

Address

Subscribed for and on behalf of
Braehead Foods Limited

at
on

KILMARNOCK
15th MAY 2019

[Redacted Signature]

.....
Director

DAVID CRAIG STEVENSON

.....
Full Name

in the presence of

Witness signature

[Redacted Signature]

Full name

ANDREW CLARK

Address

[Redacted Address]

This is the Schedule referred to in the foregoing Intercreditor Agreement among The Royal Bank of Scotland plc, RBS Invoice Finance Limited, Scottish Enterprise and Braehead Foods Limited dated *22 May* 2019

The Schedule

Deed of Accession

This deed is made

20♦

By ♦ of ♦ (Acceding Party) in favour of The Royal Bank of Scotland plc and RBS Invoice Finance Limited

and is supplemental to an inter creditor agreement (Inter Creditor Agreement) dated ♦ 2019 and made among The Royal Bank of Scotland plc, RBS invoice Finance Limited, Scottish Enterprise and Braehead Foods Limited.

It is agreed

- 1 Words and expressions defined in the Inter Creditor Agreement shall have the same meaning in this Agreement.
- 2 The Acceding Party confirms it has been supplied with a copy of the Inter Creditor Agreement and that ♦ (Transferor) has agreed to transfer to it [the Subordinated Debt] detailed in the Schedule to this Agreement.
- 3 The Acceding Party undertakes to the Senior Lenders for the benefit of the Senior Lenders (including its respective assignees, transferees and successors in title) to be bound by all the terms of the Inter Creditor Agreement capable of applying to it to the intent and effect that the Acceding Party shall be a party to the Inter Creditor Agreement with effect from the date of this Agreement.
- 4 This Agreement shall be governed by and construed according to Scots law.

In witness whereof [Insert wording]

The Schedule

[Details of Subordinated Debt]

[Insert execution provisions]