



Registration of a Charge

Company name: **THE EDINBURGH SCHOOLS PARTNERSHIP LIMITED**
Company number: **SC206930**



X808E321

Received for Electronic Filing: **28/02/2019**

Details of Charge

Date of creation: **27/02/2019**
Charge code: **SC20 6930 0027**
Persons entitled: **BANK OF SCOTLAND PLC**
Brief description:
Contains fixed charge(s).

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: **PINSENT MASONS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 206930

Charge code: SC20 6930 0027

The Registrar of Companies for Scotland hereby certifies that a charge dated 27th February 2019 and created by THE EDINBURGH SCHOOLS PARTNERSHIP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th February 2019 .

Given at Companies House, Edinburgh on 1st March 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

(1) THE EDINBURGH SCHOOLS PARTNERSHIP LIMITED

In favour of

(2) BANK OF SCOTLAND PLC

**BORROWER SUPPLEMENTAL ASSIGNATION
IN SECURITY
IN RESPECT OF
THE EDINBURGH SCHOOLS PPP PROJECT**



Pinsent Masons

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THIS ASSIGNATION IN SECURITY

BETWEEN:

- (1) **THE EDINBURGH SCHOOLS PARTNERSHIP LIMITED**, a Company incorporated under the Companies Acts with registered number SC206930 and having its registered office at Infrastructure Managers Limited, 2nd Floor, 11 Thistle Street, Edinburgh, EH2 1DF (the "**Assignor**");

in favour of

- (2) **BANK OF SCOTLAND PLC**, (formerly The Governor and Company of the Bank of Scotland) as Security Trustee for the Senior Creditors, together with its successors, assignees and transferees and having its registered office at The Mound, Edinburgh, EH1 1YZ (the "**Security Trustee**")

WHEREAS:

- (A) The Assignor created a Scots law assignation in security dated 15 November 2001 in favour of the Security Trustee; and
- (B) Additional contracts have been entered into by the Assignor and the Assignor has agreed to grant this supplemental assignation in favour of the Security Trustee.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:-

- "**Assigned Rights**" means the assets and rights assigned or to be assigned in security by or pursuant to this Deed
- "**Default Rate**" means the rate of default interest specified in Clause 16.7 (*Default Interest*) of the Common Terms Agreement
- "**Enforcement Event**" means:-
- (a) the occurrence of an Event of Default which is continuing unremedied or unwaived or
 - (b) the issue of a notice by the Banks Agent pursuant to Clause 17.2 of the Bank's Facility Agreement or the issue of a demand pursuant to Clause 9.1 of the EIB Finance Contract;
- "**Common Terms Agreement**" means the Common Terms Agreement originally 15 November 2001 among *inter alia* the Assignor and the Security Trustee as amended, supplemented, novated, extended or restated from time to time
- "**Project Documents**" means the documents listed in Part 1 of the Schedule
- "**the Regulations**" means the Financial Collateral Arrangements (No2) regulations 2003

- "Rights"** in relation to any contract, agreement or arrangement includes without limitation:-
- (a) the right to receive all and any monies payable thereunder
 - (b) the proceeds of any payment thereunder and of all claims, awards, adjudications and judgments under or in respect thereof
 - (c) all claims for damages for any breach thereof (except for a breach by the Assignor)
 - (d) the benefit of all warranties and indemnities contained therein
 - (e) any right to terminate or rescind the same and
 - (f) the right to perform and observe the provisions of the same and to compel the performance and observance by the other party or parties of its or their obligations thereunder by way of adjudication, arbitration, proceedings or otherwise

"Schedule" means the schedule annexed as relative to this Deed

"this Deed" means these presents (including the Schedule) as amended, supplemented, novated, extended or restated from time to time

1.2 Interpretation

1.2.1 In this Deed, save where referred to in Clause 1.1 (*Definitions*), terms defined and references construed in the Common Terms Agreement shall have the same meaning and construction in this Deed.

1.2.2 The provisions of Clause 1.5 (*Interpretation*) of the Common Terms Agreement shall apply *mutatis mutandis* to this Deed as if set out in full herein.

2. ASSIGNATION IN SECURITY

In security of the payment and discharge of the Secured Finance Liabilities the Assignor hereby assigns to the Security Trustee its whole right, title, interest and benefit in and to:-

2.1 the Project Documents; and

2.2 all Rights of the Assignor relative to the Project Documents.

3. PERFECTION OF SECURITY

3.1 Intimation of Assignment

3.1.1 The Assignor shall:-

- (a) procure that on execution of this Deed, a notice of the assignation of the Project Documents pursuant to this Deed (in the form of the notice set out in Part 2 of the Schedule) or in such other form acceptable to the Security Trustee is given to all such persons to whom such notice is required to be given in order to create a valid fixed security over the Assigned Rights under the law of Scotland; and

- (b) procure that all such persons give an acknowledgement of receipt of such notice in the form of the acknowledgement set out in Part 2 of the Schedule.

3.2 Further Assurance

Without prejudice to Clause 3.1, the Assignor undertakes to do all such things, take all steps and execute and deliver all such documents as the Security Trustee may reasonably request (in particular without limitation, further securities, transfers of assignments of or other instruments relating to the Assigned Rights) for perfecting or protecting the security created by or pursuant to this Deed in respect of the Assigned Rights or its priority or for facilitating the realisation or application of the Assigned Rights and the exercise of the rights, powers and discretions conferred on the Security Trustee under this Deed.

3.3 Deposit of Documents

The Assignor shall, on execution of this Deed, deliver or procure to be delivered to the Security Trustee as soon as reasonably practicable thereafter a certified copy of each of the Project Documents; in addition the Assignor shall as soon as reasonably practicable (if requested by the Security Trustee) deposit with the Security Trustee, and the Security Trustee during the continuance of this security shall be entitled to hold, all deeds and documents of title which the Security Trustee requires and which would otherwise be in the Assignor's custody or control and which relate to the Assigned Rights.

4. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

4.1 Representations and warranties

The Assignor represents and warrants to the Security Trustee that:

- 4.1.1 it is duly incorporated and validly existing under the law of Scotland;
- 4.1.2 it has the power to grant this Deed and perform its obligations hereunder;
- 4.1.3 it has taken all necessary corporate action to authorise the execution and delivery of this Deed and the performance of its obligations hereunder;
- 4.1.4 the grant of this Deed and the performance of its obligations hereunder will not contravene any law, regulation or agreement to which the Assignor is a party or by which it is bound, or cause any limitation on any of the powers of the Assignor however imposed, or the right or ability of its directors to exercise any of such powers, to be exceeded;
- 4.1.5 all authorisations required for the creation, performance, validity and enforceability of this Deed by the Assignor have been obtained and are in full force and effect;
- 4.1.6 it has not granted or created any other security, charge or encumbrance over or any option, right of pre-emption or other right to acquire the Assigned Rights or any interest therein, or agreed, conditionally or unconditionally, to do so;
- 4.1.7 it has not received or given any notice or intimation (written or verbal) of termination, rescission, suspension, breach or alleged breach in respect of any of the Project Documents; and
- 4.1.8 the information contained in Part 1 of the Schedule is complete and accurate in all respects.

4.2 Undertakings

- 4.2.1 The Assignor undertakes that save as otherwise provided in the Common Terms Agreement or unless otherwise agreed in writing by the Security Trustee it shall not:

- (a) transfer or otherwise dispose of, or grant or create any option, right of pre-emption or other right to acquire the Assigned Rights or any interest therein or agree, conditionally or unconditionally, to do so;
- (b) take or omit to take any action which would prejudice the security constituted pursuant to this Deed or impair the value of the Assigned Rights;
- (c) waive, or fail or delay to enforce, any of its rights under any of the Project Documents or rescind or terminate any of the Project Documents or agree, conditionally or unconditionally, to do so; or
- (d) amend, supplement or novate the terms of any of the Project Documents or agree, conditionally or unconditionally, to do so.

4.2.2 The Assignor undertakes that unless otherwise agreed in writing by the Security Trustee it shall:

- (a) at its own cost, promptly take all action which is at any time necessary or which the Security Trustee may request, to protect the value of the interests of the Assignor and the Security Trustee in the Assigned Rights;
- (b) procure the due and punctual performance by the other party or parties to the Project Documents of their respective obligations thereunder;
- (c) duly and punctually perform its obligations under the Project Documents;
- (d) notify the Security Trustee promptly of the occurrence of any default under or any breach by it or any other party of the Project Documents; and
- (e) forward promptly to the Security Trustee a copy (or if verbal notify it of the terms) of any notice or intimation of termination, rescission, suspension, breach or alleged breach received or given by it in respect of any of the Project Documents.

5. ADDITIONAL SECURITY PROVISIONS

5.1 Liability of Assignor

Notwithstanding any other provision of this Deed, the Assignor shall remain liable under the Project Documents to perform all the obligations assumed by it thereunder and the Security Trustee shall not be under any obligation or liability (except to the extent caused by its own gross negligence, wilful misconduct or wilful default) to the Assignor or any other person under or in respect of any of the Project Documents whether by reason of this Deed or otherwise and the Security Trustee shall not have any obligation or liability to enforce against any other party to the Project Documents any provision of the Project Documents or to make any enquiries as to the nature or sufficiency of any payment received by the Security Trustee by virtue of this Deed.

5.2 Security Trustee's Right to Perform Obligations

Without prejudice to Clause 5.1 (*Liability of Assignor*), if the Assignor fails to perform any of its obligations under any of the Project Documents, the Security Trustee may, but shall not be under any obligation to, perform or procure the performance of such obligation. If the Security Trustee shall perform or procure the performance of any obligation of the Assignor under the Project Documents, the Assignor shall, without prejudice to any other right of the Security Trustee, forthwith on demand by the Security Trustee reimburse the Security Trustee for all reasonable costs and expenses properly incurred by it in so doing together with interest thereon at the Default Rate from the date of demand until the date of payment by the Assignor to the Security Trustee (but without double counting of interest which is payable as such costs and expenses under any other Senior Lender Finance Document).

6. **RIGHTS OF SECURITY TRUSTEE**

6.1 **Power of Realisation etc.**

6.1.1 At any time on or after the occurrence of an Enforcement Event until the Security Trustee is satisfied that it has been remedied and no other Enforcement Event is subsisting, the Security Trustee shall be entitled (but shall not be obliged):

- (a) without any consent, from or to the Assignor or any other person, either in its own name or in the name of the Assignor or otherwise and in such manner and upon such terms and conditions as the Security Trustee thinks fit:
 - (i) to sell, transfer, assign or otherwise dispose of the Assigned Rights by public or private sale with or without advertisement in such manner and on such terms and conditions as the Security Trustee may consider expedient, and apply the proceeds in or towards payment or satisfaction of the Secured Finance Liabilities; and
 - (ii) generally, without prejudice to the other provisions of this clause, to exercise all the rights powers and discretions and fulfil all the obligations in respect of the Secured Finance Liabilities it would be entitled to exercise if it were the absolute owner of the Assigned Rights, and to do all acts and things it may consider necessary or expedient for the realisation of the Assigned Rights and the application of the proceeds in or towards payment or satisfaction of the Secured Finance Liabilities, or as may be incidental to the exercise of any of the rights, powers and discretions conferred on the Security Trustee under this Deed, and/or
- (b) to the extent that the Regulations apply, to appropriate the Assigned Rights (in whole or part) in or towards satisfaction of the Secured Finance Liabilities at such value(s) (the "**Appropriated Value(s)**") as the Security Trustee may reasonably determine, the Assignor agrees that this is a commercially reasonable method of valuation for these purposes and the Security Trustee shall notify the Assignor of such appropriation, and the relevant Appropriated Value(s), as soon as reasonably practicable after it has taken place.

Claims

- (c) To settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions or demands with or by any person relating in any way to the Assigned Rights;

Legal Actions

- (d) To bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Assigned Rights;

Redemption of Security:

- (e) To redeem any Security (whether or not having priority to this Deed) over the Assigned Rights and to settle the liabilities of the holders of any prior security.

Other powers:

- (f) To do all such other acts and things it may, acting *bona fide*, consider necessary for the realisation of the Assigned Rights or incidental to the exercise of any of the rights conferred on the Security Trustee under or by virtue of this Deed and to concur in the doing of anything which the Assignor has the right to do and to do any such thing jointly with any other person.

7. LIABILITY OF THE SECURITY TRUSTEE

7.1 No liability

The Security Trustee shall not in any circumstances:-

7.1.1 either by reason of any dealing with the Assigned Rights or any part thereof or for any other reason whatsoever, be liable to account to the Assignor for anything except the Security Trustee's own actual receipts; or

7.1.2 be liable to the Assignor or any other person for any costs, charges, losses, damages, liabilities or expenses arising from or connected with any realisation by the Security Trustee of the Assigned Rights or from any exercise or non-exercise by the Security Trustee, its officers, employees or agents of any power, authority or discretion conferred upon it in relation to the Assigned Rights or any part thereof or from any act, default, omission or misconduct of the Security Trustee, its officers, employees or agents in relation to the Assigned Rights (except to the extent caused by its own gross negligence, wilful misconduct or wilful default or that of its officers, employers or agents).

7.2 No duty of care

The Security Trustee shall not by virtue of Clause 7.1 (*No liability*) owe any duty of care or other duty to any person to which the duty would not be owed in the absence of that Clause.

7.3 Indemnity

The Assignor shall keep the Security Trustee indemnified from and against all reasonable and proper losses and costs prior to an Enforcement Event and all losses, costs, claims, proceedings, liabilities or demands suffered, incurred or made by it in connection with this Deed or the Assigned Rights after an Enforcement Event.

8. PROTECTION OF THIRD PARTIES

8.1 No purchaser or other person dealing with the Security Trustee shall be concerned to enquire whether any Enforcement Event has occurred or is continuing, whether any consents, regulations, restrictions or directions relating to the rights of the Security Trustee have been obtained or complied with or otherwise generally as to the propriety, validity or regularity of acts purporting or intended to be in exercise of any such rights or as to the application of any money borrowed or raised.

8.2 The receipt or discharge of the Security Trustee shall be an absolute discharge to any purchaser or other person dealing with the Security Trustee in relation to the Assigned Rights and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to the Security Trustee or at its direction.

9. SET-OFF

Without prejudice to any of its other rights, remedies or powers the Security Trustee shall, upon the occurrence of an Enforcement Event, 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 Assignor with the Security Trustee as security for the Secured Finance Liabilities and, upon the occurrence of an Enforcement Event, to apply without notice to the Assignor any such sums in and towards discharge of the Secured Finance Liabilities. The Security Trustee shall not be obliged to exercise its rights under this Clause 9, 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).

10. APPLICATION OF PROCEEDS

10.1 Application

All monies received or recovered by the Security Trustee under or by virtue of this Deed following exercise of rights hereby granted or of any security interest constituted pursuant hereto shall be applied in the manner prescribed in Schedule 10 of the Common Terms Agreement.

10.2 No limitation on discretion

Nothing contained in this Deed shall limit the right of the Security Trustee (and the Assignor acknowledges that the Security Trustee is so entitled) if and for so long as the Security Trustee, in its discretion, shall consider it appropriate, to place all or any monies arising from the exercise of rights hereby granted or any security created pursuant hereto into a suspense account, without any obligation to apply the same or any part thereof in or towards the discharge of any Secured Finance Liabilities, provided that if the aggregate of such monies placed in such suspense account equals or exceeds the Secured Finance Liabilities, the Security Trustee shall immediately apply the same in full and final discharge of the Secured Finance Liabilities.

10.3 Balance

The rights powers and discretions conferred on the Security Trustee under this clause are subject only to its obligation to account to the Assignor for any balance of the Assigned Rights or their proceeds or an amount equal to any balance of Appropriated Value(s) remaining in its hands after the Secured Finance Liabilities have been fully and unconditionally paid or satisfied.

11. PROTECTION OF SECURITY

11.1 Continuing Security

The Security created by, and any security interest constituted pursuant to, this Deed shall be a continuing security notwithstanding any settlement of accounts 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 Finance Liabilities and shall continue in full force and effect until total and irrevocably satisfaction of all the Secured Finance Liabilities.

11.2 Collateral Security

The Security created by, and any security interest constituted pursuant to, this Deed 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 Security Trustee may now or at any time hereafter hold for all or any part of the Secured Finance Liabilities.

11.3 No Waiver

No failure on the part of the Security Trustee to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Deed or any other document relating to or securing all or any part of the Secured Finance 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, powers and discretions contained in this Deed are in addition and not substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

11.4 Severability

Each of the provisions in this Deed 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 Deed shall not in any way be affected or impaired thereby.

11.5 New Account

If the Security Trustee receives notice whether actual or constructive of any subsequent security or other interest affecting any part of the Assigned Rights and/or the proceeds of any sale thereof, the Security Trustee may open a new account or accounts with the Assignor. If the Security Trustee does not open a new account it shall nevertheless be treated as if it had done so at the time when it received notice and as from that time all payments made to the Security Trustee shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount for which this Deed is security.

11.6 No Prejudice

Neither the security created by, nor any security interest constituted pursuant to, this Deed nor the rights, powers, discretions and remedies conferred upon the Security Trustee by this Deed or by law shall be discharged, impaired or otherwise affected by reason of:-

- 11.6.1 any present or future security, guarantee, indemnity or other right or remedy held by or available to the Security Trustee being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Security Trustee from time to time varying, releasing or failing to perfect or enforce any of the same; or
- 11.6.2 the Security Trustee compounding with, discharging, varying, extending, dealing with, exchanging, renewing or releasing or varying the liability of, or granting any time, indulgence, waiver or concession to, the Assignor 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 Assignor or any other person; or
- 11.6.3 anything done or omitted to be done by the Security Trustee or any other person which, but for this provision, might operate to exonerate or discharge or otherwise reduce the liability of the Assignor under this Deed; or
- 11.6.4 any legal limitation, disability, incapacity or other similar circumstance relating to the Assignor; or
- 11.6.5 any other security, right or remedy which the Security Trustee may now or at any time hereafter hold for all or any part of the Secured Finance Liabilities; or
- 11.6.6 any increase in or waiver or discharge of any of the Secured Finance Liabilities or any termination, amendment, variation, supplement, restatement, novation or replacement of the Common Terms Agreement; or
- 11.6.7 any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any charge in the constitution, name or style of the Assignor or any other person; or
- 11.6.8 any invalidity, illegality, unenforceability irregularity or frustration of any of the Secured Finance Liabilities; or
- 11.6.9 any failure, act or omission by the Security Trustee or any other person in taking up, perfecting or enforcing any security or guarantee from or against the Assignor or any other person in respect of the Secured Finance Liabilities.

11.7 Security Trustee not obliged to pursue other remedies

The Security Trustee shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Deed or by law:

- 11.7.1 to take any action or obtain judgement or decree in any Court against the Assignor;

11.7.2 to make or file any claim to rank in a winding-up or liquidation of the Assignor; or

11.7.3 to enforce or seek to enforce any other security taken, or exercise any right or plea available to the Security Trustee, in respect of any of the Assignor's obligations under the Security Documents other than this Deed.

12. EXPENSES

12.1 Undertaking

The Assignor undertakes to pay on written demand within 3 Business Days of demand the proper expenses of completing and enforcing the security hereby granted and any security interest constituted pursuant hereto and the expenses of any discharges thereof.

12.2 Interest

All costs, charges and expenses reasonably and properly incurred by the Security Trustee prior to an Enforcement Event and all costs, charges and expenses incurred by the Security Trustee after an Enforcement Event and all payments made by the Security Trustee under this Deed in the lawful exercise of the powers hereby conferred whether or not occasioned by any act, neglect or default of the Assignor shall carry interest from the date of the same being incurred or becoming payable at the Default Rate. The amount of all such costs, charges, expenses and payments and all interest thereon and all remuneration payable hereunder shall be payable by the Assignor within 3 Business Days of demand and shall be a Secured Finance Liability. All such costs, charges, expenses and payments shall be paid and charged as between the Security Trustee and the Assignor on the basis of a full and unqualified indemnity.

13. INDEMNITY

The Security Trustee and every attorney, manager, agent or other person appointed by the Security Trustee in connection with this Deed shall be entitled to be indemnified out of the Assigned Rights in respect of all reasonable and proper expenses and all liabilities prior to an Enforcement Event and after an Enforcement Event all expenses and liabilities incurred by them or him in the execution of any of the powers, authorities or discretions vested in them or him pursuant hereto and against all reasonable and proper costs prior to an Enforcement Event but all costs after an Enforcement Event and all actions, proceedings, claims and demands whether prior to or after an Enforcement Event in respect of any matter or thing done or omitted in any way relating to the Assigned Rights save to the extent that the same is caused by the fraud, gross negligence, wilful misconduct or wilful default of the Security Trustee, Receiver or any other person appointed by the Security Trustee or Receiver, and the Security Trustee may retain and pay all sums in respect of the same out of any monies received under the powers hereby conferred.

14. AVOIDANCE OF PAYMENTS

The Security Trustee's right to recover the Secured Finance Liabilities in full shall not be affected or prejudiced by any payment, realisation or appropriation which is avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, or by any release or discharge given by the Security Trustee on the faith of any such payment, realisation or appropriation.

15. NOTICES

All notices, requests, demands and other communications to be given under this Deed shall be given and/or be deemed to be given in the same manner as notices to be given under the Common Terms Agreement, and the terms of Clause 20 of the Common Terms Agreement shall apply *mutatis mutandis* to this Deed as though that clause were set out in full herein.

16. RELEASE AND DISCHARGE

16.1 Discharge

Upon irrevocable payment or discharge in full of the Secured Finance Liabilities, the Security Trustee shall at the Assignor's request release to the Assignor (or to such person as it may direct) the Assigned Rights and execute any retrocession or other deed or document to give effect to such release. Any payment, realisation or appropriation in respect of the Secured Finance Liabilities which in the reasonable opinion of the Security Trustee is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, shall not be regarded as having been irrevocably effected until the expiry of the period during which it may be challenged on such ground.

16.2 Retention of Security

If any payment, realisation or appropriation in respect of the Secured Finance Liabilities is, in the Security Trustee's reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, the Security Trustee shall be entitled to retain this Deed undischarged until the expiry of the period during which it may be challenged on any such ground.

17. TRUST

The Security Trustee shall hold the benefit of the Security under this Charge and this Charge on trust for the Senior Creditors on the terms set out in the Common Terms Agreement.

18. LIABILITY OF SECURITY TRUSTEE OR DELEGATE

18.1 Delegation

The Security Trustee may delegate any right, power or authority exercisable by it under this Deed to such person, on such terms and conditions (including power to sub-delegate) and in such manner as it thinks fit, but such delegation shall not preclude the Security Trustee from itself exercising any such right, power or authority.

18.2 Liability

The Security Trustee and any delegate shall not in any circumstances be liable to the Assignor or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Deed or any realisation, appropriation or application of the Assigned Rights or from any act, default or omission of the Security Trustee or delegate or his/her or its officers, employees or agents in relation to the Assigned Rights or otherwise in connection with this Deed, except to the extent caused by the wilful neglect or default of the Security Trustee or delegate or his/her or its officers, employees or agents.

19. POWER OF ATTORNEY

19.1 Appointment

The Assignor hereby irrevocably appoints the Security Trustee as its attorney on its behalf and in its name or otherwise, at such times and in such a manner as the attorney may think fit:

19.1.1 to do anything which the Assignor is obliged to do (but has not done) under this Deed including, without limitation, to execute further securities, transfers or assignments of and other instruments relating to, the Secured Finance Liabilities; and

19.1.2 generally to exercise all or any of the rights, powers and discretions conferred on the Security Trustee in relation to the Secured Finance Liabilities under this Deed.

19.2 Ratification

The Assignor hereby ratifies and confirms and agrees to ratify and confirm whatever its attorney may do or purport to do in the exercise or purported exercise of the power of attorney given by the Assignor under this clause.

19.3 **Exercise of power**

The appointment effected under Clause 19.1 (*Appointment*) shall take effect immediately, but the powers conferred shall only become exercisable upon the occurrence of an Enforcement Event or if the Assignor does not fulfil any of its obligations under Clause 3.2 (*Further assurance*) within 3 Business Days of notice from the Security Trustee to do so.

20. **MISCELLANEOUS**

20.1 **Non compliance by Assignor**

If the Assignor fails to make any payment or fulfil any obligation due by it under or pursuant to this Deed, the Security Trustee shall be entitled to do so on its behalf and in its name (or in its own name as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as it considers expedient, and the amount of any such payment and/or the costs incurred in fulfilling such obligation or mitigating the consequences of such failure, shall be repayable by the Assignor on demand, together with interest at the Default Rate from the date of demand until settlement and shall constitute Secured Finance Liabilities.

21. **GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by and construed in accordance with the law of Scotland.

22. **CONSENT TO REGISTRATION**

A certificate signed by any official of or person authorised by the Security Trustee shall, in the absence of manifest error, be *prima facie* evidence of the matters referred to therein. The Assignor hereby consents to the registration of this Deed and of any such certificate for preservation and execution:

IN WITNESS WHEREOF these presents typewritten on this and the preceding 10 pages together with the Schedule annexed in two parts hereto are executed as follows:-

Subscribed for **THE EDINBURGH SCHOOLS PARTNERSHIP LIMITED**
at EDINBURGH
on 05 FEBRUARY 2019
by



Signature of Director

DAVID F. GILMOUR.....

Full Name (Director)
before this witness

DESMOND M. CRENCH.....

Full Name (Witness)



Signature of Witness

GIA IML.....

2nd FLOOR.....

11 THISTLE ST EDINBURGH.....

Address EH2 1DF

Subscribed for **BANK OF SCOTLAND PLC**
at ~~27 February~~ Edinburgh
on 27 February 2019
by



Signature of Director

JOHN ANDREW TOOPER
Full Name (Director) (Authorised Signatory)
before this witness

Authorised Signatory

Full Name (Witness) *SCOTT SANDERSON*



Signature of Witness

C/O LLOYD BANKING GROUP

NEW VARIAN HOUSE, EDINBURGH

Address

This is the Schedule referred to in the foregoing Assignment in Security by The Edinburgh Schools Partnership Limited in favour of The Bank of Scotland PLC as Security Trustee dated *27 February* 2019.

SCHEDULE

PART 1

PROJECT DOCUMENTS

1. A stage 1 settlement agreement dated 29 November and 14 December 2018 made between The Edinburgh Schools Partnership Limited and Amey Community Limited;
2. A supplementary and settlement agreement dated 29 November and 18 December 2018 and made between The Edinburgh Schools Partnership Limited and the City of Edinburgh Council; and
3. A back to back settlement agreement dated 29 November and 6 December 2018 and made between The Edinburgh Schools Partnership Limited and Amey Community Limited.
4. A PCG confirmation agreement dated 29 November and 11 December 2018 and made between The Edinburgh Schools Partnership Limited and Amey PLC.

PART 2
FORM OF INTIMATION

[On letterhead of Assignor]

To: **[Name of [each] counterparty to [each] Project Document]**

[Address]

Attention: []

Date: []

Dear Sirs

[Specify relevant Contract[s] [] : (the "Contract[s]")]

We hereby give notice that by an Assignment in Security by us in favour of [Bank] [plc] [Limited] as Security Trustee (the "**Security Trustee**") dated the [] day of [] 20[] (the "**Security**"), we have assigned our part of the above defined Contract[s] and our Assigned Rights thereunder (as defined in the Security) in security of the Secured Finance Obligations (as defined in the Security). A [certified] copy of the Security is annexed to this notice.

In terms of the Security:

1. Unless and until the Security Trustee gives you written notice that it has become entitled to enforce the Security (an "**Enforcement Notice**"):
 - 1.1 We remain liable to perform all our obligations and entitled to exercise all our rights, powers and discretions, under our part of the Contract[s] and Rights, and
 - 1.2 You should make all payments due under the Contract[s] to [our] account number [] with [bank] at [branch] sort code [].
2. Upon the Security Trustee giving you an Enforcement Notice:
 - 2.1 The Security Trustee shall be entitled (but not obliged) immediately or at any time thereafter to exercise all the rights, powers and discretions (subject to performance of the counterpart obligations) under our part of the Contract[s] and Rights;
 - 2.2 You should make all further payments under the Contract[s] to such account or accounts (if any) or otherwise as the Security Trustee may direct; and
 - 2.3 The Security Trustee shall be entitled to assign our part of the Contract[s] to a third party or parties as provided in the Contract[s].
3. We irrevocably agree that you shall be entitled to rely and act on any Enforcement Notice without enquiry.

Please confirm that you have not received notice of any other assignment or security, charge or encumbrance in respect of the said Contract[s] [and that all claims or rights of set-off, counterclaim, deduction, lien or retention in respect of the said Contract[s] are excluded].

Please acknowledge receipt of this intimation by signing and returning the acknowledgement on the enclosed duplicate.

Yours faithfully

For and on behalf of **[Assignor]** [Limited] [plc]

..... Director/Authorised Signatory

..... Full Name

[On duplicate]

To: **[Assignor]** Limited [plc]

[Address]

Attention: []

and

[Bank] [plc] [Limited] as Security Trustee

[Address]

Attention: []

Date: []

Dear Sirs

We **[counterparty to Contract]** [Limited] [plc] of **[address]** acknowledge receipt of the notice of intimation of which this is a duplicate and will fulfil its terms.

We confirm that we have not received notice of any other assignation or security charge or encumbrance in respect of the said [Contract[s]] [and that all claims or rights of set-off, counterclaim, deduction, lien or retention in respect of the said Contract[s] are excluded].

Yours faithfully

For and on behalf of **[Counterparty]** [Limited] [plc]

..... Director/Authorised Signatory

..... Full Name