

**TRANSFORM SCHOOLS (NORTH LANARKSHIRE) LIMITED**  
(the "Company")  
(Company Number 05358417)

**WRITTEN RESOLUTIONS**  
(pursuant to Section 381A of the  
Companies Act 1985)

WE, the undersigned, being the sole member of the Company entitled to attend and vote at a general meeting of the Company, hereby RESOLVE pursuant to Section 381A of the Companies Act 1985 as follows:

- 1 THAT the entry into, execution and delivery of the Relevant Documents listed in Schedule 1 annexed to these written resolutions and the performance by the Company of its rights and obligations thereunder, and the entry into, execution and performance of all other documents ancillary thereto or in connection therewith be approved;
- 2 THAT the articles of association annexed as Schedule 2 to these written resolutions and signed for the purpose of identification by the sole member of the Company be adopted as the articles of association of the Company in substitution for and to the exclusion of the existing articles of association; and
- 3 THAT the creation by the Company of £16,000,000 secured loan notes 2036 in the form of the instrument annexed as Schedule 3 to these written resolutions and signed for the purpose of identification by the sole member of the Company be approved.

.....  
for and on behalf of  
Transform Schools (North Lanarkshire) Holdings  
Limited

Date: 27 MAY 2005



## **SCHEDULE 1**

### **Relevant Documents**

The Relevant Documents in this Schedule 1 are, unless otherwise stated, such documents as defined in the document entitled "Master Definitions Schedule" in relation to the funding of the Project;

- 1 Project Agreement (amendments to be initialled);
- 2 Side Letters in relation to price changes for Clarkston and Wishaw;
- 3 Construction Contract;
- 4 Construction Contractor Guarantee;
- 5 FM Agreement;
- 6 FM Agreement Guarantee;
- 7 Technical Adviser's Appointment Contract;
- 8 Parallel Loan Agreements;
- 9 Retention Bond;
- 10 Adjudication Bond;
- 11 Authority Direct Agreement;
- 12 ProjectCo Loan Stock Instrument;
- 13 ProjectCo Loan Stock Floating Charge;
- 14 Shareholders Agreement;
- 15 Intragroup Loan Agreement;
- 16 Secondment Agreement among the Company, Balfour Beatty Infrastructure Investments Limited and Innisfree PFI Fund III (acting by its manager Innisfree Limited); and
- 17 Assignment of the reversionary rights of the Company to the Authority including the notice of assignment thereunder.

**SCHEDULE 2**

**Articles of Association**

### **SCHEDULE 3**

#### **Form of Secured Loan Note**

Company Number 5358417

COMPANIES ACT 1985

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PRIVATE COMPANY LIMITED BY SHARES

---

ARTICLES OF ASSOCIATION

of

TRANSFORM SCHOOLS (NORTH LANARKSHIRE) LIMITED

(adopted by special resolution passed on 27 May 2005)

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2005  
MBH.SKC.B01645.1023



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SOLICITORS

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Company Number 5358417

**COMPANIES ACT 1985**

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**PRIVATE COMPANY LIMITED BY SHARES**

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**ARTICLES OF ASSOCIATION**

of

**TRANSFORM SCHOOLS (NORTH LANARKSHIRE) LIMITED**

(adopted by special resolution passed on 27 May 2005)

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**PRELIMINARY**

1 In these articles:

**Act** means the Companies Act 1985, including any statutory modification or re-enactment thereof for the time being in force;

**Article** means the appropriate section of these Articles;

**HoldCo 'A' Shareholder(s)** means the holder(s) of all the issued 'A' Shares in HoldCo as a class (but in the event that any consent, approval, agreement, determination, decision, opinion or action is required of or to be taken by the holders of the 'A' Shares in HoldCo in terms of these Articles, such term shall be construed as a reference to the consent, approval, agreement, determination, decision, opinion or action (as the case may be) of the person or persons owning a majority of the 'A' Shares in HoldCo for the time being);

**HoldCo 'B' Shareholder(s)** means the holder(s) of all the issued 'B' Shares in HoldCo as a class (but in the event that any consent, approval, agreement, determination, decision, opinion or action is required of or to be taken by the holders of the 'B' Shares in HoldCo in terms of these Articles, such term shall be construed as a reference to the consent, approval, agreement, determination, decision, opinion or action (as the case may be) of the person or persons owning a majority of the 'B' Shares in HoldCo for the time being);

**HoldCo** means Transform Schools (North Lanarkshire) Holdings Limited (registered number 5366823);

**HoldCo Articles** means the Articles of Association of HoldCo as amended from time to time;

**Regulation** means the appropriate regulation from Table A; and

**Table A** means Table A as set out in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No. 808) as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (SI 1985 No. 1052).

- 2 The Company is a private company. The regulations contained in Table A, save insofar as they are excluded or varied hereby, and the Articles hereinafter contained shall constitute the regulations of the Company. Regulations 2, 3, 24, 40, 50, 64 to 69 (inclusive), 72 to 81 (inclusive), 89 to 91 (inclusive), 99, 101 and 118 of Table A shall not apply to the Company.

## **SHARES**

### **3 Share Capital**

The share capital of the Company at the date of the adoption of these Articles is £10,000 divided into 10,000 ordinary shares of £1 each.

### **4 Lien**

The lien conferred by Regulation 8 shall attach to fully paid shares and to all shares registered in the name of any person indebted or under liability to the Company whether he is the sole registered holder thereof or one of two or more joint holders.

## **TRANSFERS**

### **5 General**

- 5.1 The directors shall register the transfer of any share where such transfer is made pursuant to the terms of a debenture ('Prudential Debenture') granted by HoldCo in favour of Prudential Trustee Company Limited (registered number 1863305) (or such successor security trustee under the Prudential Debenture) on or around the date of the adoption of these Articles, but shall register no other transfer.
- 5.2 The provisions contained in Article 5.1 above shall only apply and subsist until the Prudential Denture has been released, rescinded or otherwise reduced.

## **PROCEEDINGS AT GENERAL MEETINGS**

- 6 No business shall be transacted at any general meeting unless a quorum is present at the commencement and throughout the whole of the meeting. One member present in person or by proxy or by authorised representative, being or representing the holder(s) of a majority of the ordinary shares in issue shall be a quorum for all purposes. A proxy shall be entitled to vote on a show of hands and Regulation 54 shall be modified accordingly. In Regulation 62 the words "not less than 48 hours" and "not less than 24 hours" shall be deleted.
- 7 The following words are to be added at the end of Regulation 41: "and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting shall stand dissolved".

- 8 It shall not be necessary to give any notice of an adjourned meeting and Regulation 45 shall be construed accordingly.
- 9 A poll may be demanded by any member present in person or by proxy and Regulation 46 shall be modified accordingly.
- 10 The chairman of a general meeting shall not be entitled to a second or casting vote.

### RESOLUTIONS

- 11 Any such resolution in writing as is referred to in Regulation 53 may consist of several documents in the like form each signed by one or more of the members (or their duly authorised representatives) referred to in that Regulation.

### DIRECTORS

#### 12 Appointment

- 12.1 For so long as the whole of the equity share capital of the Company is held by HoldCo, the board shall be constituted of such directors as are appointed to the HoldCo board of directors under the HoldCo Articles (each such director of the Company having the same designation (if any) as an 'A' Director or 'B' Director as he does under the HoldCo Articles).
- 12.2 For so long as the whole of the equity share capital of the Company is held by HoldCo, any notice of appointment or removal of a director of HoldCo under the HoldCo Articles shall be deemed to be a notice of appointment or removal (as the case may be) of such director as a director of the Company.
- 12.3 For so long as the whole of the equity share capital of the Company is not held by HoldCo but at least ninety per cent of the equity share capital by nominal value is held by one person that person shall be entitled to remove any director of the Company by notice in writing to the Company left at its registered office and by like notice to appoint any person as a director in his place. Such notice shall (unless another time is specified in it) take effect upon receipt at the registered office.
- 12.4 Any director appointed pursuant to this Article 12 shall be at liberty from time to time to make such disclosures to the HoldCo 'A' Shareholder(s) or HoldCo 'B' Shareholder(s) (and where such shareholder is a corporation to its holding company or any of the subsidiary companies of such holding company) who had appointed him as to the business and affairs of the Company as he shall in his absolute discretion determine.
- 12.5 Except in the manner provided by this Article no person shall be appointed to fill any vacancy occurring in the office of director and neither the Company in general meeting nor the directors shall have the power to fill any such vacancy.
- 13 The quorum for board meetings shall be two directors, being, for so long as the whole of the equity share capital of the Company is held by HoldCo, at least one 'A' Director and one 'B' Director (as designated in Article 12.1 above) (save as set out in Article 14 below). An alternate director who is not himself a director may, if his appointer is not present, be counted towards the quorum.



- 14 If a scheduled board meeting is inquorate then the board meeting shall be reconvened 5 business days later at the same time and place. If at that subsequent board meeting the scheduled meeting is still inquorate due to non attendance by some directors then, if the directors present consider that there are urgent matters requiring resolution, the required quorum shall be any two directors (who may both be 'A' Directors or "B" Directors).
- 15 A director need not hold any shares of the Company to qualify him as a director but he shall be entitled to receive notice of and attend and speak at all general meetings of the Company and at all separate general meetings of the holders of any class of shares in the capital of the Company.
- 16 The directors may exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, property and uncalled capital and to issue debentures, debenture stock and other securities as security for any debt, liability or obligation of the Company or of any third party.
- 17 A director is not entitled to vote as a director at a board meeting in regard to any contract or arrangement in which he is interested but if on declaring such interest he is permitted to vote by the board, and he does so vote, his vote shall be counted and he shall be reckoned in estimating a quorum when any such contract or arrangement is under consideration (save where the director votes against a resolution to enforce the Company's rights under such contract or arrangement) and Regulation 94 shall be modified accordingly.
- 18 The office of director shall be vacated if the director:
  - 18.1 becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - 18.2 becomes prohibited from being a director by reason of any order made under the provisions of the Company Directors Disqualification Act 1986; or
  - 18.3 in the opinion of all his co-directors becomes incapable by reason of mental disorder of discharging his duties as director; or
  - 18.4 resigns his office by notice in writing to the Company; or
  - 18.5 ceases to be a director of HoldCo; or
  - 18.6 is removed from office.
- 19 **Alternate Directors**
  - 19.1 Any director may by notice in writing appoint any other person to be his alternate director and every such alternate director shall (subject to his giving to the Company an address within the United Kingdom at which notices may be served on him) be entitled to receive notices of all meetings of the directors and, in the absence from the board of the director appointing him, to attend and vote at meetings of the directors and to exercise all the powers, rights, duties and authorities of the director appointing him. A director may at any time revoke the appointment of an alternate director appointed by him and appoint another person in his place, and if a director shall die or cease to hold the office of director the appointment of his alternate shall thereupon

cease and determine. An alternate director shall not be counted in reckoning the maximum number of directors allowed by the articles of association for the time being. A director, acting as alternate, shall have an additional vote at meetings of directors for each director for whom he acts as alternate but he shall count as only one for the purpose of determining whether a quorum be present.

19.2 Every person acting as an alternate director shall be an officer of the Company, and shall alone be responsible to the Company for his own acts and defaults, and he shall not be deemed to be the agent of or for the director appointing him. The remuneration of any such alternate director shall be payable out of the remuneration payable to the director appointing him, and shall consist of such portion of the last-mentioned remuneration as shall be agreed between the alternate and the director appointing him.

20 Any such resolution in writing as is referred to in Regulation 93 may consist of several documents in the like form each signed or approved by letter, facsimile transmission, cable or electronic mail by one or more of the directors for the time being entitled to vote at a meeting of the directors and Regulation 93 shall be modified accordingly.

## 21 **Chairman of the Board**

21.1 The Chairman of the board of the Company shall be appointed for a period of twelve months.

21.2 Provided that the whole of the equity share capital of the Company is held by HoldCo:

21.2.1 The Chairman shall be the same person appointed as the chairman of HoldCo under the HoldCo Articles.

21.2.2 The Chairman of the board of the Company shall not have a casting vote at any board meeting or at any general meeting of the Company.

21.2.3 The fifth sentence of Regulation 88 shall be deleted.

21.2.4 If the Chairman is not present at any board meeting then the same person as would chair the meeting under the HoldCo Articles in the same circumstances, if present, shall act as Chairman for the purpose of the meeting.

21.3 Except as provided in Article 21.2, Regulation 91 shall apply.

22 The directors may delegate any of their powers to committees upon which, for so long as the whole of the equity share capital of the Company is held by HoldCo, the 'A' Directors and the 'B' Directors shall be represented. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed by the directors. Any such delegation may be made subject to any conditions the directors may impose, and either collaterally with or without exclusion of their own powers and may be revoked or altered.

23 The meetings and proceedings of any committee of the directors formed pursuant to Article 22 shall be governed by the provisions of these Articles regulating the

meetings and proceedings of the directors, so far as the same are applicable and are not superseded by any regulations made by the directors pursuant to Article 22.

- 24 A meeting of the directors or of a committee of the directors may consist of a conference between directors some or all of whom are in different places provided that each director who participates is able:

24.1 to hear each of the other participating directors address the meeting; and

24.2 if he so wishes, to address all of the other participating directors simultaneously;

whether directly, by conference telephone or by any other form of communications equipment (whether in use at the time this Article is adopted or developed subsequently) or by a combination of such methods.

- 25 The directors may from time to time appoint one or more of their body to hold any executive office in the management of the business of the Company including the office of chief executive or managing or joint managing or deputy or assistant managing director as the directors may decide for such fixed term or without limitation as to period and on such terms as they think fit and a director appointed to any executive office shall (without prejudice to any claim for damages for breach of any service contract between him and the Company) if he ceases to hold the office of director from any cause *ipso facto* and immediately cease to hold such executive office.

- 26 Questions arising at any duly convened and quorate meeting of directors shall be determined by the unanimous vote of the directors present and voting. Regulation 88 shall be modified accordingly. If unanimity is not achieved then, for so long as the whole of the equity share capital of the Company is held by HoldCo, (i) if in the reasonable opinion of the Chairman there are issues which require immediate resolution or if professional advice has been given to the HoldCo 'A' Shareholder(s) and HoldCo 'B' Shareholder(s) that HoldCo or the Company should be wound up, such issue or matter shall forthwith be referred to the HoldCo 'A' Shareholder(s) and HoldCo 'B' Shareholder(s) for decision and (ii) in other cases where unanimity is not achieved, a further board meeting shall be convened five business days after the board meeting at which unanimity was not achieved (or at such other time as the directors may agree, not exceeding seven business days after such board meeting) and if, at such further board meeting, unanimity is not achieved the matter shall forthwith be referred to the HoldCo 'A' Shareholder(s) and HoldCo 'B' Shareholder(s) for decision. If the matter remains unresolved for a period of at least 14 days from the date of the meeting at which it was discussed or from the date it was referred to the HoldCo 'A' Shareholder(s) and HoldCo 'B' Shareholder(s) for decision then the matter shall be referred by the company secretary of the Company to the chief executive (or equivalent) of each of the HoldCo 'A' Shareholder(s) and HoldCo 'B' Shareholder(s) for resolution by them jointly.

- 27 For so long as the whole of the equity share capital of the Company is held by HoldCo any 'A' Director or 'B' Director may determine that a decision or resolution on any specified matter which shall have been proposed for consideration by the board shall only be taken or passed with the express written agreement of the HoldCo 'A' Shareholder(s) and HoldCo 'B' Shareholder(s). Any such determination may be made by the relevant director either:

- a) by delivering to the secretary a notice in writing specifying the matter in respect of which the determination is being made (i) at any time before the time fixed for the meeting at which such matter is to be considered or (ii) at the meeting itself; or
- b) orally during the course of the meeting.

Following such determination being made, the board shall have no power to take any further action with regard to the matter which shall have been specified unless and until the HoldCo 'A' Shareholder(s) and HoldCo 'B' Shareholder(s) shall have given their written consent thereto.

### **CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS**

- 28 Any one of the directors or the secretary for the time being of any corporation which is a member of the Company, or any other person appointed by resolution of the directors or other governing body of such corporation, may (subject to the articles of association of that corporation) act as its representative at any meeting of the Company or any class of members of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Company.
- 29 Any one of the directors or the secretary for the time being of the Company or any other person appointed by resolution of the directors of the Company may act as its representative at any meeting of any corporation of which the Company is a member or of any class of members of such corporation and the person so authorised shall be entitled to exercise the same powers on behalf of the Company as the Company could exercise if it were an individual member of that corporation.

### **SECRETARY**

- 30 For so long as the whole of the equity share capital of the Company is held by HoldCo, subject to the provisions of the Act, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they think fit, and any secretary so appointed may be removed by them.
- 31 For so long as the whole of the equity share capital of the Company is not held by HoldCo but at least ninety per cent of the equity share capital by nominal value is held by one person that person shall be entitled to remove the secretary by notice in writing to the Company left at its registered office and by like notice to appoint any person as secretary in his place. Such notice shall (unless another time is specified in it) take effect upon receipt at the registered office.

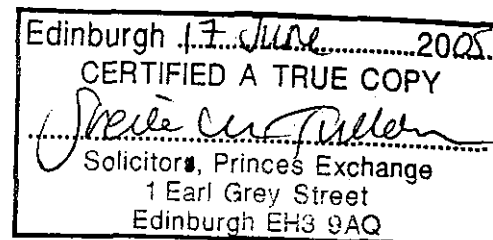
### **INDEMNITY**

#### **32 Indemnity for Directors/Officers**

- 32.1 Every director or other officer (other than the auditors) of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal or in connection with any application under section 144 or section 727 of the Act,

in which relief is granted to him by the court, and no director or other officer (other than the auditors) shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. This Article shall only have effect in so far as its provisions are not avoided by section 310 of the Act.

- 32.2 The directors shall have the power to purchase and maintain for any director or officer (other than the auditors) of the Company insurance against any such liability as is referred to in section 310(1) of the Act.



DATED 8 JUNE 2005

**TRANSFORM SCHOOLS (NORTH LANARKSHIRE)  
HOLDINGS LIMITED**

and

**PRUDENTIAL TRUSTEE COMPANY LIMITED**  
as Security Trustee

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**HOLDCO DEBENTURE**

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This Debenture is entered into subject to and with the benefit of a Security Trust  
and Intercreditor Deed of even date herewith.

**McGrigors**  
Edinburgh

Princes Exchange  
1 Earl Grey Street  
EDINBURGH  
EH3 9AQ

Telephone: 0131 777 7000

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DEBENTURE dated 8 June 2005 between:

- (1) **TRANSFORM SCHOOLS (NORTH LANARKSHIRE) HOLDINGS LIMITED** incorporated in England (Registered Number 05366823) whose registered office is at 6<sup>th</sup> Floor, 350 Euston Road, Regent's Place, London, NW1 3AX (the "**Chargor**")  
and
- (2) **PRUDENTIAL TRUSTEE COMPANY LIMITED** incorporated in England (Registered Number 01863305) whose registered office is at Laurence Pountney Hill, London, EC4R 0HH as Security Trustee for the Beneficiaries under the Security Trust and Intercreditor Deed and as defined in the Master Definitions Schedule, and its successor(s) as Security Trustee (the "**Security Trustee**")

## 1 **DEFINITIONS AND INTERPRETATION**

### 1.1 **Definitions**

In this Deed unless the context requires otherwise:

"**this Deed**" means these presents (including the Schedules) as amended or supplemented from time to time;

"**Collateral Deed**" means the agreement so called dated on or around the date of this Deed entered into among, *inter alia*, the Chargor, the Senior Creditors and the Security Trustee, as amended, supplemented or novated from time to time;

"**Dividends**" means all dividends, interest and other distributions of an income nature, paid or payable in respect of any Shares;

"**Fixed Charge Assets**" means any Security Asset which for the time being is the subject of a mortgage, fixed charge or assignment created under or pursuant to Clause 2 (*Fixed Security*);

"**Floating Charge Asset**" means any Security Asset to the extent it is not a Fixed Charge Asset which for the time being is the subject of the floating charge created by Clause 3 (*Floating Charge*);

"**Master Definitions Schedule**" means the master definitions schedule dated on or about the date of this Deed initialled for the purposes of identification by or on behalf of, *inter alia*, the parties to this Deed;

"**Receiver**" means any one or more persons, individually or together with additional persons, appointed as an administrative receiver, receiver and manager or other receiver under or pursuant to this Deed or the Security in respect of all or any part of the Security Assets;

"**Receivables**" means all book and other debts and monetary claims now or hereafter due or arising to the Chargor;

"Related Rights" means in relation to the Shares:

- (a) all Dividends; and
- (b) all warrants, options, rights, property and distributions of a capital nature paid, payable, offered, issued or otherwise accruing by way of bonus, rights, redemption, substitution, preference, warrant, option or otherwise in respect thereof;

"Schedules" means any one or more of the Schedules to this Deed;

"Secured Obligations" has the meaning given in the Master Definitions Schedule;

"Security" means all or any of the Security Interests now or at any time created by or pursuant to this Deed;

"Security Assets" means all or any part of or interest in the undertaking, property, rights and assets of the Chargor which now or at any time hereafter are or are expressed to be the subject of any Security Interest created or purported to be created by or pursuant to this Deed;

"Security Interest" means any mortgage, charge, pledge, lien, retention of title arrangement (other than in respect of goods purchased in the ordinary course of business), hypothecation, encumbrance or security interest of any kind, or any agreement or arrangement having substantially the same economic or financial effect as any of the foregoing (including any "hold back" or "flawed asset" arrangement);

"Shares" means:

- (a) all present and future shares in Transform Schools (North Lanarkshire) Limited and Transform Schools (North Lanarkshire) Funding plc, being at the date hereof those described in Schedule 1 Part 1; and
- (b) the Related Rights pertaining thereto;

"Specified Agreements" means the agreements specified in Part 1 of Schedule 2; and

## 1.2 Master Definitions Schedule

In this Deed, unless the context requires otherwise, terms defined in clause 1 (*Definitions*) of the Master Definitions Schedule shall have the same meaning in this Deed.

## 1.3 Interpretation

The provisions of clauses 2 (*Interpretation*) and 3 (*References and Headings*) and 4 (*Miscellaneous*) of the Master Definitions Schedule shall apply *mutatis mutandis* to this Deed as if set out in full in this Deed.

## 2 FIXED SECURITY

In security for the payment and discharge of the Secured Obligations, the Chargor, with full title guarantee, creates the fixed Security Interests set out in the following provisions of this Clause in favour of the Security Trustee.

## **2.1 Charges**

### **2.1.1 Shares**

The Chargor charges by way of first legal mortgage, the Shares.

### **2.1.2 Plant, machinery and chattels**

The Chargor charges by way of first fixed charge, all plant, machinery and other chattels now or hereafter owned by it, and its interest in all plant, machinery and other chattels held by it under any lease, licence, hire or rental contract or other arrangement (excluding any forming part of its stock in trade or work in progress) together with the benefit of all hiring, leasing or rental contracts in respect of any such plant, machinery or chattels hired, leased or rented by it to any other person, and any guarantees, indemnities and Security Interests for the performance of such person's obligations now or hereafter held or enjoyed by it in relation thereto.

### **2.1.3 Authorised Investments**

The Chargor charges by way of first fixed charge all Authorised Investments now or hereafter owned by it or held by any nominee on its behalf.

### **2.1.4 Receivables**

The Chargor charges by way of first fixed charge (except to the extent the subject of a valid fixed Security Interest under any other provision of this Deed), all Receivables together with the benefit of all guarantees, indemnities, Security Interests and other rights of any nature now or hereafter held or enjoyed by it in relation thereto.

### **2.1.5 Intellectual Property Rights**

The Chargor charges by way of first fixed charge, all Intellectual Property now or hereafter owned by it (solely or with others), and its interest in all Intellectual Property now or hereafter held or used by it (solely or with others) under licence, sub licence, franchise or otherwise in any way together with the benefit of all licences, sub licences, franchises and other agreements or arrangements of any nature entered into by it in relation to the use by it or third parties of such Intellectual Property.

### **2.1.6 Miscellaneous**

The Chargor charges by way of first fixed charge:

- (a) the benefit of all statutory or regulatory licences, permissions, consents or authorisations held by it in connection with its business or the use of any Security Asset and any right to payment of compensation thereunder;
- (b) all sums, realised or recovered by any liquidator or administrator of the Chargor pursuant to Part VI of the Insolvency Act 1986;
- (c) its goodwill; and
- (d) its uncalled capital.

## **2.2 Assignments**

### **2.2.1 Specified Agreements**

The Chargor assigns absolutely by way of security, the benefit of and its whole present and future rights under the Specified Agreements and all other contracts or agreements to which it is or may at any time hereafter be or become a party and the proceeds of all payments, claims, awards and other sums paid or payable to the Chargor under or in respect thereof and all the Chargor's present and future claims, rights, remedies and causes of action thereunder.

### **2.2.2 Insurances**

The Chargor assigns absolutely by way of security, the benefit of and its whole present and future rights and claims under or in respect of all Insurances including without limitation, all rights to submit, negotiate and settle claims, and all monies now or hereafter payable thereunder, including return of premiums.

## **3 FLOATING CHARGE**

### **3.1 Charge**

In security for the payment and discharge of the Secured Obligations, the Chargor with full title guarantee charges by way of first floating charge, its whole undertaking, property, rights and assets, present and future, except to the extent they are effectively mortgaged, charged or assigned by way of fixed mortgage, charge or assignment under or pursuant to this Deed (including any such property rights or assets comprised in a charge which is reconverted under Clause 3.5 (*Reconversion*)), or any other mortgage, charge or assignment in favour of the Security Trustee.

### **3.2 Crystallisation by notice**

The Security Trustee may at any time by written notice to the Chargor convert the floating charge created by Clause 3.1 (*Charge*) into a fixed charge as regards all or any part of the Floating Charge Assets specified in such notice (and if no Floating Charge Assets are so specified, such notice shall take effect in respect of all the Floating Charge Assets):

- (a) if the Security Trustee considers such Floating Charge Assets to be in danger of being seized or sold under any distress, attachment, execution, diligence or other process levied or threatened, or otherwise to be in jeopardy and whether or not an Enforcement Event has occurred; or
- (b) upon the occurrence of an Enforcement Event.

### **3.3 Automatic crystallisation**

If, without the Security Trustee's prior written consent:

- (a) any Floating Charge Assets are made or become subject to any Security Interest other than a Permitted Security;

- (b) any person levies any distress, attachment, execution, diligence or other process against any Floating Charge Assets, or threatens or takes any steps to do so; or
- (c) the Chargor disposes of any Floating Charge Assets otherwise than by way of sale in the ordinary course of its business for market value on an arms length basis and for consideration payable in cash on normal commercial terms or threatens or takes any steps to do so,

then the floating charge created by Clause 3.1 (*Charge*) shall automatically and immediately, without any requirement for notice, be converted into a fixed charge in respect of such Floating Charge Assets provided that, in the case of (b), if such distress, attachment, execution, diligence or other process is discharged within 10 days, then the charge reconverts into a floating charge.

#### 3.4 ~~Future Floating Charge Assets~~

Save as otherwise stated in any notice given under Clause 3.2 (*Crystallisation by notice*) or, unless such notice extends to all the Floating Charge Assets, any prospective Floating Charge Assets acquired by the Chargor after crystallisation has occurred under Clause 3.2 (*Crystallisation by notice*) or Clause 3.3 (*Automatic crystallisation*) shall become subject to the floating charge created by Clause 3.1 (*Charge*), so that such crystallisation shall be effective only as regards the Floating Charge Assets in existence at the date of crystallisation.

#### 3.5 **Reconversion**

Where the floating charge created by Clause 3.1 (*Charge*) has crystallised under Clause 3.2 (*Crystallisation by notice*) or Clause 3.3 (*Automatic crystallisation*), it may be reconverted into a floating charge by written notice given at any time by the Security Trustee to the Chargor, in respect of the Security Assets specified in such notice.

#### 3.6 **Priority**

- 3.6.1 Any present or future fixed Security Interest created by the Chargor in favour of the Security Trustee under or pursuant to this Deed, or otherwise, shall, save as the Security Trustee may otherwise agree in writing at or after the time of its creation, rank and have priority before the floating charge created by Clause 3.1 (*Charge*).
- 3.6.2 Any Security Interest created by the Chargor after the date of this Deed (except any Security Interest in favour of the Security Trustee) shall be expressed to be subject to this Deed and the Security, and shall rank and have priority after the Security.

### 4 **PERFECTION OF SECURITY**

#### 4.1 **General**

- 4.1.1 The Chargor's undertakings and obligations under this Clause 4 shall remain in force from the date of this Deed until the Secured Obligations have been fully and unconditionally paid or discharged or the Security has been fully and unconditionally released in accordance with Clause 15 (*Release*).

4.1.2 If a valid Security Interest under or pursuant to this Deed cannot be created over the Chargor's rights under any document or agreement without the consent of any party thereto, the Chargor shall promptly so notify the Security Trustee and (unless the Security Trustee otherwise requires) shall use all reasonable endeavours to obtain such party's consent, and pending such consent this Deed shall exclude such document or agreement itself but shall secure by way of assignment or charge, as the case may be, all proceeds, claims, damages, compensation, profit, rent, rental and other sums of any description which the Chargor has received or may receive or be entitled to under or in respect of such document or agreement.

4.1.3 Insofar as is necessary to ensure that any purported disposition of any freehold or leasehold property under or pursuant to this Deed is a valid disposition in terms of Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the other Senior Finance Documents and any side letters between any parties in relation thereto shall be incorporated in this Deed.

4.1.4 The omission from the Schedule 1 Part 1 of details of any Shares or the incompleteness of any details which are so inserted shall not affect the validity or enforceability of the Security (including, without limitation, the Security Interests created by Clause 2.1.1 (*Shares*)).

#### 4.2 Specified Agreements

Immediately after execution of this Deed and/or on request from the Security Trustee at any time thereafter, the Chargor shall except to the extent that such notice is given and acknowledged in a Direct Agreement:

- (a) give notice in or as near as may be the form set out in Part 2 of Schedule 2 to each counterparty to the Specified Agreements; and
- (b) use all reasonable endeavours to procure that each such counterparty promptly delivers an executed acknowledgement of such notice in or as near as may be the form set out in Part 3 of Schedule 2.

#### 4.3 Shares

Immediately after execution of this Deed and/or on request from the Security Trustee at any time thereafter, the Chargor shall:

- (a) deposit with the Security Trustee all certificates or documents of title or evidence of ownership in relation to the Shares or any of them specified by the Security Trustee; and/or
- (b) execute and deliver to the Security Trustee such shares, transfers, assignments or other documents as the Security Trustee may request to perfect or improve its security over such Shares or to have any such Shares registered in name of the Security Trustee or its nominee or otherwise obtain legal title to such Shares.

## **5 PROTECTION OF SECURITY**

### **5.1 Continuing security**

The Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force until the Secured Obligations have been fully and unconditionally paid and discharged.

### **5.2 No prejudice**

The Security shall be in addition to and shall not in any way prejudice or be prejudiced by any other Security Interest, right or remedy which the Security Trustee or Beneficiaries may now or at any time hereafter hold for all or any part of the Secured Obligations.

### **5.3 ~~No waiver~~**

Failure or delay on the part of the Security Trustee or any Receiver in exercising any right, power or discretion under or pursuant to this Deed shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Deed are in addition to and not in substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

### **5.4 Severability**

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

### **5.5 Non impairment**

The Chargor agrees that none of its obligations or the Security Trustee's rights, powers and discretions under this Deed or those of any Receiver, shall be reduced, discharged or otherwise adversely affected by:

- (a) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any Security Interest or any right or remedy which the Security Trustee or Beneficiaries or any other person may have now or in the future from or against the Chargor or any other person in respect of any of the Secured Obligations; or
- (b) any failure, act or omission by the Security Trustee or Beneficiaries or any other person in taking up, perfecting or enforcing any Security Interest or guarantee from or against the Chargor or any other person in respect of the Secured Obligations; or
- (c) any increase in or waiver or discharge of any of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of the Collateral Deed or any other Senior Finance Document; or
- (d) any grant of time, indulgence, waiver or concession to the Chargor or any other person; or



- (e) any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Chargor or any other person; or
- (f) any invalidity, illegality, unenforceability, irregularity or frustration of any of the Secured Obligations; or
- (g) anything done or omitted to be done by the Security Trustee or Beneficiaries or any Receiver or other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Chargor under this Deed or the Security.

#### **5.6 Deposit of documents of title etc**

Subject to the rights of any prior chargee, and except as otherwise expressly agreed in writing by the Security Trustee, the Chargor shall deposit with the Security Trustee and it shall be entitled to retain during the continuance of this Deed and the Security, all deeds and documents of title relating to the Fixed Charge Assets, including, without limitation, policies, notes or contracts in respect of the Insurances and certificates in respect of the Shares.

#### **5.7 Further assurance**

5.7.1 Without prejudice to the provisions of Clause 4 (*Perfection of security*) and Clause 11 (*Power of Attorney*) the Chargor shall, promptly after being requested to do so by the Security Trustee, do all such acts and things, give such instructions (in material or dematerialised form) and sign, seal, execute and deliver all such deeds and other documents as the Security Trustee may (prior to the occurrence of an Enforcement Event, acting reasonably) require (and in such form as the Security Trustee may (prior to the occurrence of an Enforcement Event, acting reasonably) require) for perfecting or protecting the Security in respect of the Security Assets or its priority, vesting title to any Security Asset in the Security Trustee or its nominee or any purchaser, or for facilitating the realisation or application of the Security Assets and the exercise of the rights, powers and discretions conferred on the Security Trustee or any Receiver under this Deed and including, without limiting the foregoing generality, executing any transfer, conveyance, charge, assignment or assurance of Security Assets (whether to the Security Trustee or its nominee or otherwise), making any registration and giving any notice, order or direction.

5.7.2 The obligations of the Chargor under this Deed shall be in addition to and not in substitution for the covenants for further assurance deemed to be included herein by virtue of the Law of Property (Miscellaneous Provisions) Act 1994.

#### **5.8 New accounts**

At any time after the Security Trustee or any Beneficiary has received or is deemed to be affected by notice (whether actual or constructive) of the creation of any subsequent Security Interest over or affecting any part of the Security Assets or the proceeds of realisation, the Security Trustee or any Beneficiary may open a new account or accounts with the Chargor. If the Security Trustee or relevant Beneficiary does not open a new account or accounts it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice and as from that time all payments made to the Security Trustee or relevant Beneficiary shall be credited or be treated as having

been credited to the new account or accounts and shall not operate to reduce the amount covered by the Security.

## **6 SHARES**

### **6.1 Dividends etc**

Until the Security has become enforceable:

- (a) All Dividends paid or payable in respect of any Shares which remain registered in name of the Chargor or its nominee shall be paid direct to the Chargor; and
- (b) All Dividends paid to the Security Trustee or its nominee in respect of any Shares which are registered in name of the Security Trustee or its nominee shall be held by the Security Trustee or its nominee for the account of the Chargor and paid to the Chargor or as it may direct but the Security Trustee or its nominee should not have any duty to ensure that any Dividends are duly and punctually paid.

### **6.2 Voting before enforcement**

#### **6.2.1 Until the Security has become enforceable:**

- (a) All voting and other rights attaching to any Shares which remain registered in name of the Chargor or its nominee shall continue to be exercisable by the Chargor or its nominee, but only in accordance with and subject to the terms of Clause 6.2.2; and
- (b) All voting and other rights attaching to any Shares which are registered in name of the Security Trustee or its nominee shall be exercised by the Security Trustee or its nominee in accordance with the written instructions of the Chargor, but subject always to the terms of Clause 6.2.2. In the absence of any such instructions, the Security Trustee shall not exercise such rights.

#### **6.2.2 For the purposes of Clause 6.2.1 the Chargor may not exercise the voting and other rights attaching to the Shares nor shall it be entitled to require the Security Trustee or its nominee to exercise any such rights, in favour of any resolution for any of the following purposes:**

- (a) The alteration of the memorandum or articles of association of any company in which the Shares are held;
- (b) The issue of any shares in any such company;
- (c) The purchase or redemption by any such company of any of its own shares or its giving financial assistance for the purpose of the acquisition of shares in it or its holding company;
- (d) The reduction of the share capital of any such company;
- (e) The winding up of any such company or the approval of any voluntary arrangement in relation to it; or

- (f) Any other matter which in the Security Trustee's reasonable opinion might prejudice the Security or adversely affect the value of the Shares.

6.2.3 The Chargor shall indemnify the Security Trustee or its nominee and keep it indemnified against all losses, claims and liabilities whatever which it may incur as a result of acting in accordance with the Chargor's instructions in relation to any Shares.

### 6.3 Voting and Dividends after enforcement

After the Security has become enforceable, the Security Trustee shall be entitled, without any notice to or consent or authority of the Chargor either in its own name or in name of the Chargor or otherwise:

- (a) To receive and retain all Dividends and apply them in accordance with Clause 12 ~~(Application of Proceeds);~~
- (b) To exercise all voting and other rights attaching to the Shares (including those remaining registered in name of the Chargor or its nominee) as it may think fit;
- (c) Generally, without prejudice to the other provisions of this Clause, to exercise all the rights, powers and discretions in respect of the Shares it would be entitled to exercise if it were the absolute owner of the Shares.

### 6.4 Calls etc

The Chargor shall pay all calls which may be made and meet all other obligations which may arise in respect of the Shares (whether or not registered in name of the Security Trustee or its nominee). The Security Trustee or its nominee shall not have any obligation to pay any such calls or meet any such obligations, (or to make any enquiry as to the nature or sufficiency of any payment received by it or the Chargor, or take any action to collect or enforce payment of any amounts to which it may be entitled under this Deed) but if the Chargor fails to do so, may elect to make the relevant payments or meet the relevant obligations in which event the amount of the payments so made and the obligations so met shall be repayable by the Chargor on demand, together with interest at the Default Rate from the date of demand until settlement, and shall constitute Secured Obligations.

### 6.5 Notices etc

6.5.1 Where any of the Shares is registered in name of the Security Trustee or its nominee, it shall promptly pass on to the Chargor all notices or other communications (or a copy thereof) it may receive from any company in which the Shares are held but shall not be liable for any failure to do so.

6.5.2 Where any of the Shares remain registered in name of the Chargor or its nominee, it shall promptly deliver to the Security Trustee a copy of every circular, notice, report, set of accounts or other document it may receive in respect of or relating to any such Investments.

### 6.6 Nominees

Without prejudice to the terms of Clause 4.3 (*Shares*), the Chargor shall at its expense if so requested at any time by the Security Trustee procure that any person holding any Shares as

its nominee or to its order shall execute and deliver to the Security Trustee or its nominee a letter in or as near as may be the form set out in Schedule 1 Part 2.

## **6.7 Information**

The Chargor shall promptly copy to the Security Trustee, and comply with, all requests for information within its knowledge which are made under Section 212 of the Companies Act 1985 or any similar provision in the articles of association of any company in which the Shares are held, failing which the Security Trustee shall be entitled to provide such information as it may have on behalf of the Chargor.

## **7 NEGATIVE PLEDGE**

The Chargor shall not create or permit to subsist any Security Interest on any of its assets other than any Permitted Encumbrance.

## **8 ENFORCEMENT**

### **8.1 Security enforceable**

The Security shall become enforceable, and the power of sale and other powers conferred by section 101 of the Law of Property Act 1925, as varied and extended by this Deed, shall be exercisable immediately upon or at any time after:

- (a) an Enforcement Event occurring; or
- (b) the Chargor requesting the Security Trustee to appoint a Receiver or administrator.

### **8.2 Law of Property Act**

The powers conferred by Section 101 of the Law of Property Act 1925, as varied and extended by this Deed, shall be deemed to have arisen immediately upon execution of this Deed, and Sections 93, 103 and 109 of that Act shall not apply to this Deed, but the statutory power of sale shall not be exercisable until the Security has become enforceable.

### **8.3 Rights upon enforcement**

At any time after the Security has become enforceable, the Security Trustee shall be entitled, without any notice to, demand on or consent of the Chargor, either in its own name or in name of the Chargor or otherwise, and in such manner and on such terms and conditions as it thinks fit, to take possession of and realise the Security Assets and apply the proceeds of realisation in or towards payment of or provision for the Secured Obligations in accordance with Clause 12 (*Application of proceeds*), and in particular, without limiting the generality:

- (a) to do all things it may consider necessary or expedient for the realisation of the Security Assets or incidental to the exercise of any of the rights conferred on it under or in connection with this Deed, the Law of Property Act 1925 or the Insolvency Act 1986; and
- (b) generally to exercise all the rights powers and discretions in respect of the Security Assets it would be entitled to exercise if it were the absolute owner of the Security

Assets (including, without limitation, all the powers given to trustees by law in respect of securities or property subject to a trust).

#### **8.4 Relationship to Receiver**

All rights, powers and discretions expressly and impliedly conferred on a Receiver by this Deed or by law may be exercised by the Security Trustee in respect of any Security Asset after the Security becomes enforceable, without first appointing a Receiver and notwithstanding that a Receiver may have been appointed.

### **9 APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

#### **9.1 Appointment**

9.1.1 ~~At any time after the Security has become enforceable~~ the Security Trustee shall be entitled:

- (a) to appoint one or more persons as a Receiver or Receivers in respect of the Security Assets;
- (b) to appoint one or more persons as an administrator or administrators of the Chargor;
- (c) to make an administration application in respect of the Chargor; or
- (d) to give notice of intention to appoint an administrator or administrators in respect of the Chargor.

9.1.2 The appointment of a Receiver or Receivers or an administrator or administrators, or the giving of notice of intention to appoint an administrator or administrators shall be effected by the Security Trustee by written instrument or notice in accordance with and in such form as may be prescribed under the Insolvency Act 1986. If any such person so appointed as Receiver or administrator is removed from office or otherwise ceases to act, the Security Trustee shall be entitled (subject to the provisions of the Insolvency Act 1986) to appoint a replacement in the same manner.

#### **9.2 Power to act separately**

Where more than one Receiver or administrator is appointed, the appointees shall have power to act separately unless the Security Trustee shall specify to the contrary.

#### **9.3 Receiver's remuneration**

The Security Trustee may from time to time determine the remuneration of a Receiver and the maximum rate specified in Section 109(6) of the Law of Property Act 1925 shall not apply.

#### **9.4 Removal of Receiver**

The Security Trustee may (subject to Section 45 of the Insolvency Act 1986) remove a Receiver from all or any of the Security Assets of which he/she is the Receiver.

## 9.5 Further appointments of Receiver

Appointment of a Receiver hereunder shall not preclude:

- (a) the Security Trustee from making any subsequent appointment of a Receiver over all or any Security Assets over which a Receiver has not previously been appointed or has ceased to act; or
- (b) the appointment of an additional Receiver to act while the first Receiver continues to act.

## 9.6 Receiver's agency

Every Receiver shall be the agent of the Chargor (which shall be solely liable for his/her ~~acts, defaults and remuneration~~) unless and until the Chargor goes into liquidation, after which time he/she shall act as principal and shall not become the agent of the Security Trustee or any other Beneficiary.

## 9.7 Relationship with Security Trustee

To the fullest extent permitted by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable be exercised by the Security Trustee in relation to any Security Asset without first appointing a Receiver, and notwithstanding the appointment of a Receiver.

## 10 POWERS OF RECEIVER

Every Receiver may exercise, in relation to the Security Assets over which he/she is appointed, all the powers, rights and discretions conferred by law, including those conferred on a Receiver by the Law of Property Act 1925, and on a receiver or administrative receiver under the Insolvency Act 1986, in particular those set out in Schedule 1 to that Act and in addition to and without limiting such powers, every Receiver may, with or without the concurrence of any other person:

- (a) sell, lease, let, license, grant options over and vary the terms of, terminate or accept surrenders of leases, licences or tenancies of, all or any of the Security Assets without the need to observe any of the provisions of Sections 99 and 100 of the Law of Property Act 1925 in such manner and generally on such terms and conditions as he/she shall think fit in his/her absolute and unfettered discretion and any such sale or disposition may be for cash, shares, stock, bonds, debentures or other securities and investments of any kind or other valuable consideration (in each case payable in a lump sum or by instalments) and carry any such transactions into effect in the name of and on behalf of the Chargor;
- (b) promote or procure the incorporation of any new company (whether or not a subsidiary of the Chargor), subscribe for or otherwise acquire shares, stock, debentures, loan stock or other securities in any such company in name of the Chargor, or the Receiver or its or his/her nominee or trustee, and procure the purchase, lease, licence of acquisition of all or any of the Security Assets by any such company for a consideration in cash, shares, stock, debentures, loan stock or other securities, shares of profits of sums calculated by reference to profits or turnover or royalties or licence fees or otherwise, whether or not secured on the

assets of such company, payable or receivable in a lump sum or by instalments over such period as the Receiver may think fit;

- (c) effect any arrangement or compromise with any Beneficiary or other person as he/she shall think fit;
- (d) effect all repairs, renewals and improvements to the Security Assets and take out, renew or increase insurances on such terms and against such risks as he/she shall think fit;
- (e) appoint agents or managers, for the foregoing purposes at such remuneration as he/she may determine;
- (f) redeem any prior Security Interest in accordance with Clause 14 (*Redemption of prior securities*), so that the costs and expenses including payment of any principal or interest, incurred shall be deemed to be expenses properly incurred by the Receiver;
- (g) pay the reasonable administrative charges of any Beneficiary in respect of time spent by their agents and employees in dealing with matters raised by the Receiver or relating to the receivership of the Chargor;
- (h) commence and/or complete any building operations and apply for and obtain any planning permissions, building regulation consents or licences, in each case as he/she may in his/her absolute discretion think fit;
- (i) do all such other acts and things he/she may consider to be incidental or conducive to any of the above matters or powers or otherwise incidental or conducive to the preservation, improvement or realisation of the Security Assets;
- (j) generally, without prejudice to the other provisions of this Clause to exercise all the rights, powers and discretions in respect of the Security Assets he/she would be entitled to exercise if he/she were the absolute owner thereof and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Security Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Obligations; and
- (k) in respect of any of the Security Assets situated in or governed by the law of any foreign jurisdiction to exercise in addition to the foregoing powers, all the powers conferred by the Insolvency Act 1986 or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in such jurisdiction.

## 11 POWER OF ATTORNEY

### 11.1 Appointment

The Chargor by way of security hereby irrevocably appoints the Security Trustee and any Receiver separately or its or his/her nominee as its attorney (with full powers of substitution and delegation) on its behalf and in its name or otherwise, at such times and in such a manner as the attorney may think fit:

- (a) to do anything which the Chargor is obliged to do (but has not done) under this Deed including, without limitation, to sign, seal, execute and deliver all deeds, documents, notices, further securities, transfers or assignments of and other instruments relating to, and give instructions (in material or dematerialised form) in respect of, the Security Assets; and
- (b) generally to exercise all or any of the rights, powers and discretions conferred on the Security Trustee in relation to the Security Assets under this Deed, the Law of Property Act 1925 or the Insolvency Act 1986.

## 11.2 Ratification

The Chargor 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 Chargor under this Clause.

## 11.3 Exercise of power

The appointment effected under Clause 11.1 (*Appointment*) shall take effect immediately, but the powers conferred shall only become exercisable upon the Security becoming enforceable or if the Chargor does not fulfil any of its obligations under Clause 5.7 (*Further assurance*) within 2 Business Days of notice from the Security Trustee to do so.

## 12 APPLICATION OF PROCEEDS

### 12.1 Application

All monies realised or otherwise arising from the enforcement of the Security shall subject to Clause 12.2 (*Monies on suspense account*) be applied by the Security Trustee:

- (a) in or towards payment of or provision for all costs and expenses incurred by the Security Trustee or any Receiver and all remuneration due to any Receiver under or in connection with this Deed and the Security;
- (b) in or towards payment of or provision for the Secured Obligations in accordance with the Security Trust and Intercreditor Deed; and
- (c) after payment or discharge of the Secured Obligations in full, in payment of any surplus to the Chargor or any other person entitled thereto.

This Clause is subject to the settlement of any claims which have priority over the Security, and shall not prejudice the right of the Security Trustee or any other Beneficiary to recover any shortfall from the Chargor.

### 12.2 Monies on suspense account

Nothing in this Deed shall limit the right of the Security Trustee and any Receiver (and the Chargor acknowledges that the Security Trustee and any Receiver is so entitled) if and for so long as the Security Trustee and any Receiver in its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of the Security into a suspense account or accounts (which may be with the Security Trustee), without any obligation to apply the same or any part thereof in or toward the discharge of the Secured



Obligations provided that if the aggregate of such monies so placed to the credit of such suspense account or accounts shall equal or exceed the Secured Obligations, the Security Trustee or the Receiver as the case may be shall, subject always to Clause 15 (*Release*), forthwith apply the same towards settlement of the Secured Obligations.

### **12.3 Balance**

The rights powers and discretions conferred on the Security Trustee and any Receiver under this Deed are subject only to its or his/her obligation to account to the Chargor for any balance of the Security Assets or their proceeds remaining in its or his/her hands after the Secured Obligations have been fully and unconditionally paid and discharged.

## **13 THIRD PARTIES**

### **13.1 No duty of enquiry**

No purchaser from or other person dealing with the Security Trustee or any Receiver in relation to the Security Assets shall be concerned to enquire whether any event has occurred upon which any of the rights, powers and discretions conferred under or in connection with this Deed, the Law of Property Act 1925 or the Insolvency Act 1986 is or may be exercisable, or whether any of the rights, powers and discretions exercised or purported to be exercised by it or him/her hereunder has otherwise become exercisable, whether any of the Secured Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any right, power or discretion hereunder. All the protection to purchasers contained in Sections 104 and 107 of the Law of Property Act 1925 shall apply to any person purchasing from or dealing with the Security Trustee or any Receiver or its or his/her nominee or delegate as if the Secured Obligations had become due and the statutory powers of sale in relation to the Security Assets had arisen on the date of this Deed.

### **13.2 Receipts**

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

## **14 REDEMPTION OF PRIOR SECURITIES**

### **14.1 Redemption**

The Security Trustee shall be entitled at any time (or, in the case of a Permitted Encumbrance, at any time following an Enforcement Event):

- (a) to redeem any prior Security Interest over the Security Assets; and/or
- (b) to procure the transfer of such Security Interest to itself or its nominee; and/or

- (c) to settle and pass the accounts of the party or parties entitled to any such prior Security Interest and any accounts so settled and passed shall, save for manifest error, be conclusive and binding on the Chargor.

**14.2 Costs and expenses**

The Chargor shall pay the Security Trustee, within 3 business days of demand, the costs and expenses incurred by the Security Trustee in connection with any such redemption and/or transfer, including the payment of any principal or interest, and these shall be subject to the terms of Clause 17.2 (*Non compliance by Chargor*) and shall be Secured Obligations.

**15 RELEASE**

**15.1 Release and Retention of Security**

Following the Senior Creditors Release Date, the Security Trustee shall at the Chargor's request, and at its expense, discharge the Security and retransfer to the Chargor so much of the Security Assets as have not been realised or applied in or towards satisfaction of the Secured Obligations. Any payment or realisation in respect of the Secured Obligations 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 settled or discharged until the expiry of the period during which it may be challenged on any such ground, and the Security Trustee shall be entitled to retain this Deed and the Security undischarged and shall not be obliged to retransfer the Security Assets until the expiry of the period during which it may be challenged on any such ground.

**15.2 Avoidance of payments**

The Security Trustee's right to recover the Secured Obligations in full shall not be affected or prejudiced by any payment or realisation 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 or realisation.

**16 LIABILITY OF SECURITY TRUSTEE AND RECEIVER**

**16.1 Limitation**

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

## **16.2 Mortgagee in possession**

Without prejudice to Clause 16.1 (*Limitation*), the Security Trustee and every Receiver shall not be liable by reason of entering into possession of any Security Asset to account as mortgagee in possession or for any loss on realisation, or for any default or omission for which a mortgagee in possession would otherwise be liable. If and whenever the Security Trustee or any Receiver enters into possession of any Security Asset, it or he/she shall be entitled to go out of possession at any time at its or his/her discretion.

## **17 MISCELLANEOUS**

### **17.1 Financial assistance**

If and to the extent that this Deed or the Security would constitute the provision of unlawful financial assistance for the purpose of the acquisition of shares in the Chargor or its holding company, it shall not apply to such part of the Secured Obligations as may have been incurred by the Chargor directly or indirectly for such purpose.

### **17.2 Non compliance by Chargor**

If the Chargor fails to make any payment or fulfil any obligation due by it under or pursuant to this Deed, the Security Trustee or any Receiver 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 Chargor on demand, together with interest at the Default Rate from the date of demand until settlement and shall constitute Secured Obligations.

### **17.3 Tacking**

The Security Trustee and other Beneficiaries shall perform any obligation to make further advances to the Chargor, ProjectCo or the Issuer under the Senior Finance Documents.

### **17.4 Certificate**

A certificate signed by an authorised signatory on behalf of the Security Trustee shall, save in the case of manifest error, conclusively constitute the amount of the Secured Obligations at the relevant time for all purposes of this Deed and the Security.

### **17.5 Set-Off**

The Security Trustee and any other Beneficiaries may retain any money standing to the credit of the Chargor in any currency upon any account or otherwise (whether or not in the Chargor's name) as cover for any Secured Obligations and/or at any time or times without notice to the Chargor combine or consolidate all or any of such money with all or such part of the Secured Obligations due or owing by it as the Security Trustee or other Beneficiaries may select and may purchase with any such money any other currency required to effect such combination or consolidation.

**17.6 Information**

The Security Trustee may from time to time seek from any other provider of finance to the Chargor such information about the Chargor and its affairs as the Security Trustee may think fit. The Chargor directs any such third party to provide such information to the Security Trustee and agrees to provide such further authority for this purpose as the Security Trustee may from time to time require.

**17.7 Effect as deed**

This Deed is intended to take effect as a deed notwithstanding that it may have been executed by the Security Trustee under hand only.

**17.8 Expenses**

The Chargor shall, within three Business Days of demand, pay to the Security Trustee the amount of all costs, losses, liabilities and expenses (including legal fees and value added tax) properly incurred by the Security Trustee in relation to any Finance Document (including the administration, protection, realisation, enforcement or preservation of any rights under or in connection with this Security, or any consideration by the Security Trustee as to whether to realise or enforce the same, and/or any amendment, waiver, consent or release of any Finance Document and/or any other document referred to in this Security, which in the case of costs incurred prior to an Enforcement Event shall be limited to costs reasonably and properly incurred).

**17.9 Collateral Deed provisions**

The provisions of clauses 24 (*Remedies and Waivers, Partial Invalidity, Counterparts*) and 25 (*Notices*) of the Collateral Deed shall apply *mutatis mutandis* to this Deed as if set out in full herein.

**18 COUNTERPARTS**

This Deed may be executed in two counterparts, and by either party hereto in separate counterparts, each of which shall be deemed to be an original, but both such counterparts shall together constitute one and the same instrument.

**19 GOVERNING LAW**

This Deed shall be governed by and construed in accordance with the law of England and in so far as not already subject thereto the parties irrevocably submit to the non-exclusive jurisdiction of the English Courts.

**EXECUTED AND DELIVERED** as a deed by the Chargor and signed by the Security Trustee on the date first above stated.

## **SCHEDULE 1**

### **Part 1: Shares**

- 1 50,000 Ordinary Shares of £1 each in Transform Schools (North Lanarkshire) Funding plc.
  - 2 10,000 Ordinary Shares of £1 each in Transform Schools (North Lanarkshire) Limited
-

## SCHEDULE 1

### Part 2: Form of Nominee's Undertaking re Shares

[On letterhead of [Transform Schools (North Lanarkshire) Intermediate Limited]

To: Prudential Trustee Company Limited  
as Security Trustee specified in the Debenture  
Address: Laurence Pountney Hill  
London  
EC4R 0HH  
Attention: [     ]

Copied to: Transform Schools (North Lanarkshire) Holdings Limited  
Address: 6<sup>th</sup> Floor  
350 Euston Road  
Regent's Place  
London  
NW1 3AX  
Attention: [     ]

Dear Sirs

Debenture dated [     ] 2005 (the "Debenture") between Transform Schools (North Lanarkshire) Holdings Limited (the "Chargor") and Prudential Trustee Company Limited as Security Trustee as specified in the Debenture (the "Security Trustee")

- 1 We confirm that we hold the Shares listed in the Appendix to this letter (the "Nominee Investments") and the Related Rights pertaining to them as nominee for or to the order of the Chargor and agree that we will henceforth hold them to your order under and subject to the terms of the Debenture and in particular, without prejudice to the foregoing generality, we undertake to and agree with you that:
- (a) Until we have received written notice from you that the Debenture has become enforceable (an "Enforcement Notice") we shall be entitled to receive and deal with the Dividends paid or payable in respect of, and exercise all voting and other rights attaching to the Nominee Investments in accordance with Clauses 6.1(a) and 6.2.1(a) of the Debenture and the declaration of trust by us in favour of the Chargor, but subject to the provisions of Clause 6.2.2 of the Debenture, and we hereby agree that we shall be bound by and undertake to observe the provisions of such Clauses; and
  - (b) After we have received an Enforcement Notice from you, you shall be entitled to receive and deal with all such Dividends and exercise all such voting and other rights, and generally, to exercise all the rights, powers and discretions in respect of the Nominee Investments you would be entitled to exercise if you were the absolute owner of the Nominee Investments, as provided in the Debenture.

- 2 We shall promptly deliver to you a copy of every circular, notice, report, set of accounts or other document we may receive in respect of or relating to any of the Nominee Investments or Related Rights.
- 3 We irrevocably appoint you by way of security our attorney (with full power to appoint substitutes and to delegate), in our name and on our behalf and as our act and deed, at any time to execute, deliver and perfect any transfer, renunciation, proxy, mandate, legal or other charge, mortgage, assignment, deed or other document, perform any act, or give any instructions under the rules and practices of a Relevant System or otherwise which may be required of the Chargor under the Debenture (or of us under this Undertaking) or deemed by you necessary or desirable for any purpose of the Debenture or this Undertaking or to enhance or perfect the security intended to be constituted by the Debenture or to transfer legal ownership of any of the Nominee Investments or the Related Rights pertaining to them and we shall ratify and confirm all acts and things done by you or any substitute or delegate in the exercise or purported exercise of this power of attorney.
- 4 We acknowledge having received a copy of the Debenture.
- 5 This Undertaking shall be governed by and construed in accordance with English law and we irrevocably submit for your benefit to the non-exclusive jurisdiction of the English Courts.
- 6 Terms defined and principles of interpretation provided for in the Debenture shall, unless otherwise defined in this Undertaking, or the context otherwise requires, have the same meanings and shall apply in this Undertaking.

EXECUTED and DELIVERED as a DEED this [       ] day of [       ] 200[   ]

by [Transform Schools (North Lanarkshire) Intermediate Limited]

acting by:

.....	Director
.....	Full Name
.....	Director/Secretary
.....	Full Name

**Appendix - (Nominee Investments)**

**1 ordinary share of £1 in Transform Schools (North Lanarkshire) Funding plc**



## **SCHEDULE 2**

### **Part 1: The Specified Agreements**

- 1 Collateral Deed
  - 2 Security Trust and Intercreditor Agreement
  - 3 Shareholders' Undertaking
  - 4 Declaration of trust by Transform Schools (North Lanarkshire) Intermediate Limited in favour of the Chargor dated on or around the date hereof
-

## SCHEDULE 2

### Part 2: Form of notice of assignment to counterparties to Specified Agreements

[On letterhead of Chargor]

To: [Name of Counterparty to [each] Specified Agreement]

Address:

Fax no:

Attention:

Dear Sirs

[Specify relevant Specified Agreement[s] (the "Specified Agreement[s]")]

- 1 We hereby give notice that by a Debenture between us and Prudential Trustee Company Limited as Security Trustee therein specified (the "Security Trustee") dated [•] 2005 the ("Debenture") we have assigned absolutely by way of security to the Security Trustee the benefit of and our whole present and future rights under the Specified Agreement[s] and the proceeds of all payments, claims, awards and other sums (including liquidated and ascertained damages) paid or payable to us under or in respect thereof and all our present and future claims, rights, remedies and causes of action thereunder (the "Connected Rights"). A copy of the Debenture is annexed to this notice.
- 2
  - 2.1 [We irrevocably instruct and authorise you without further reference to or enquiry or permission from us:
    - (a) not to accept or act upon any notice, instruction, authorisation or request hereafter given by us with regard to termination, rescission or repudiation of [any of] the Specified Agreement[s] without the Security Trustee's written confirmation of those instructions;
    - (b) to disclose to the Security Trustee any information about the Specified Agreement[s] and Connected Rights which it may hereafter request or any time and from time to time.
  - 2.2 Notwithstanding the assignment referred to, we shall remain liable to fulfil all obligations and liabilities under or in respect of the Specified Agreement[s], and neither the Security Trustee nor any receiver appointed by it shall have any such obligation or liability to you (but may elect to fulfil same).
  - 2.3 Unless and until the Security Trustee gives you written notice that the Debenture has become enforceable (an "Enforcement Notice");

- (a) we remain entitled (subject to paragraph 2.1(a) above) to exercise all rights, powers and discretions conferred by the Specified Agreement[s]; and
- (b) you should send all notices and other communications under and in respect of the Specified Agreement[s] and Connected rights to us and make all payments under and in respect of the Specified Agreement[s] and Connected Rights to [account number 20591373 with The Royal Bank of Scotland plc at 15 Bishopsgate, London, EC2P 2AP sort code 50-00-00.

2.4 Upon the Security Trustee giving you an Enforcement Notice:

- (a) the Security Trustee shall be entitled immediately or at any time thereafter to exercise all the rights, powers and discretions conferred under or available at law or in equity in respect of the Specified Agreement[s] and Connected Rights; and
- (b) you should hold all present and future rights, interests and benefits arising under or in respect of the Specified Agreement[s] and the Connected Rights to the order of the Security Trustee and make all further payments in respect thereof to such account or accounts (if any) or otherwise as the Security Trustee may direct.

2.5 We irrevocably agree that you shall be entitled to rely and act on any Enforcement Notice without enquiry.

3 Please confirm that you have not received notice or are otherwise aware of any other assignment, charge, encumbrance or third party interest in respect of [any of] the Specified Agreement[s] or Connected Rights and that you have not claimed or exercised and will not claim or exercise any right of set-off, counterclaim, deduction, retention or security interest in respect thereof.

4 Please also confirm that at the date of your acknowledgement no breach or default on our part or any other ground or circumstance exists which would entitle you to terminate, rescind or repudiate [any of] the Specified Agreement[s].

5 The instructions and authorisations in this letter may not be revoked or amended without the prior written consent of the Security Trustee.

6 This notice shall be governed by English law.

7 Please acknowledge receipt and confirm your agreement to the terms of this letter by sending the attached acknowledgement to the Security Trustee with a copy to us.

Yours faithfully

For and on behalf of Transform Schools (North Lanarkshire) Holdings Limited

.....  
Director/Authorised Signatory

## SCHEDULE 2

### Part 3: Form of acknowledgement re Specified Agreements

{On letterhead of each counterparty to each Specified Agreement}

To: Prudential Trustee Company Limited  
as Security Trustee specified in the Debenture  
Address: Laurence Pountney Hill  
London  
EC4R 0HH  
Attention: [     ]

Copied to: Transform Schools (North Lanarkshire) Holdings Limited  
Address: 350 Euston Road  
Regent's Place  
London  
NW1 3AX  
Attention: [     ]

Date: [     ]

Dear Sirs

[Specify relevant Specified Agreement(s) as per notice of assignment](the "Specified Agreement[s]")

- 1 We hereby acknowledge receipt from Transform Schools (North Lanarkshire) Holdings Limited (the "Chargor") of a notice of assignment dated [•] of the benefit of its whole present and future rights under the Specified Agreement[s], and the proceeds of all payments, claims, awards and other sums (including liquidated and ascertained damages) paid or payable to the Chargor under or in respect thereof and all its present and future claims, rights, remedies and causes of action thereunder (the "Connected Rights"). We also acknowledge receipt of a copy of the Debenture dated [•] 2005 between you and the Chargor (the "Debenture").
- 2 We confirm that we accept the instructions and authorisations contained in paragraph 2 of the said notice and undertake to comply with their terms.
- 3 We have not received notice nor are we aware of any other assignment, charge, encumbrance or third party interest in respect of the [any of] the Specified Agreement[s] or the Connected Rights, and we have not claimed or exercised and will not claim or exercise, any right of set-off, counterclaim, deduction, retention or security interest in respect thereof.

4        At the date of this letter, no breach or default on the part of the Chargor or any other ground or circumstance exists which would entitle us to terminate, rescind or repudiate [any of] the Specified Agreement[s].

5        We are aware that you will rely on this letter in respect of your rights under the Debenture.

6        This letter shall be governed by English law.

Yours faithfully,

For and on behalf of Prudential Trustee Company Limited

..... Director/Authorised Signatory

..... Full Name

EXECUTED AND DELIVERED AS A DEED

by TRANSFORM SCHOOLS (NORTH LANARKSHIRE) HOLDINGS LIMITED acting by

..... Director  
..... MICHAEL ARCHER ..... Full Name  
..... J. D. ..... Director/Secretary  
..... Full Name  
..... JOHN WATSON

GIVEN UNDER THE COMMON SEAL OF  
~~PRUDENTIAL TRUSTEE COMPANY LIMITED~~  
as Security Trustee

..... Sealing Officer  
..... TONY PETROU ..... Full Name