

# MR01

## Particulars of a charge



Companies House

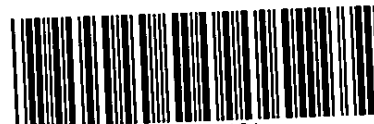
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A fee is payable with this form  
Please see 'How to pay' on the  
last page

You can use the WebFiling service to file this form online.  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

☐ **What this form is NOT for**  
You may not use this form to  
register a charge where there is  
an instrument Use form MR08



\*S5502D40\*

SCT

16/04/2016

#640

COMPANIES HOUSE

This form **must** be delivered to the Registrar for registration within  
**21 days** beginning with the day after the date of creation of the charge.  
If the form is delivered outside of the 21 days it will be rejected unless it is accompanied by a  
court order extending the time for delivery

☒ You **must** enclose a certified copy of the instrument with this form. This will be  
scanned and placed on the public record **Do not send the original**

SATURDAY

### 1 Company details

Company number 0 5 8 2 9 4 3 2 ✓  
Company name in full SCOTTISH BORDERS EDUCATION PARTNERSHIP LIMITED

For official use

→ Filing in this form  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

### 2 Charge creation date

Charge creation date 0 1 / 0 4 / 2 0 1 6

### 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name PRUDENTIAL TRUSTEE COMPANY LIMITED ✓

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

MR01

Particulars of a charge

4 Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.

Brief description

N/A

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"

Please limit the description to the available space

5 Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ Yes

☐ No

6 Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ Yes Continue

☒ No Go to Section 7

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7 Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

8 Trustee statement <sup>①</sup>

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

<sup>①</sup> This statement may be filed after the registration of the charge (use form MR06)

9 Signature

Please sign the form here

Signature

Signature

X

on behalf of  
MacRoberts LLP

X

This form must be signed by a person with an interest in the charge

# MR01

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name Rachel Cooper

Company name MacRoberts LLP

Address Excel House

30 Semple Street

Post town Edinburgh

County/Region

Postcode E H 3 8 B L

Country

DX ED 207 - EDINBURGH

Telephone 01312482143



### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



### Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy



### Important information

Please note that all information on this form will appear on the public record.



### How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'



### Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.

**For companies registered in England and Wales**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1



### Further information

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)



**FILE COPY**

## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 5829432

Charge code: 0582 9432 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 13th April 2016 and created by SCOTTISH BORDERS EDUCATION PARTNERSHIP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th April 2016

9

Given at Companies House, Cardiff on 25th April 2016



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

**EXECUTION VERSION**

**ASSIGNATION OF CONTRACT**

by

**SCOTTISH BORDERS EDUCATION PARTNERSHIP LIMITED**

In favour of

**PRUDENTIAL TRUSTEE COMPANY LIMITED**  
as Security Trustee

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



.....  
MACROBERTS LLP

18 APRIL 2016  
.....

**MACROBERTS**

**LLP**

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## ASSIGNATION OF CONTRACT

by

- (1) **SCOTTISH BORDERS EDUCATION PARTNERSHIP LIMITED**, incorporated in England and Wales under the Companies Acts (no 05829432) and having its registered office at Part First Floor, 1 Grenfell Road, Maidenhead, Berkshire, SL6 1HN ("**Assignor**")

in favour of

- (2) **PRUDENTIAL TRUSTEE COMPANY LIMITED**, a company registered in England and Wales under the Companies Acts (no 01863305) and having its registered office at Laurence Pountney Hill, London, EC4R 0HH as security trustee for itself and each of the Senior Finance Parties ("**Security Trustee**")

### WHEREAS:

- (A) The Senior Finance Parties agreed to advance certain funds to the Assignor under the Collateral Deed
- (B) The Assignor entered into an assignment of contracts in favour of the Security Trustee on 30 January 2007 as a condition precedent to the availability of the funds under the Collateral Deed (the "**Original Assignment**") The Original Assignment made provision for further assignments to be created in respect of Further Contracts (as defined in the Original Assignment).
- (C) The Contract is a Further Contract and is accordingly assigned in accordance with this Deed

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed.

**Assigned Contract Interests** means the whole right, title and interest (but not any of the obligations) of the Assignor under the Contract, together with.

- (a) all the rights and benefits now or in the future arising under, pertaining to or deriving from the Contract,
- (b) all monies, debts and liabilities which now are or have been or at any time hereafter shall or may be or become due, owing or incurred to the Assignor under or in connection with the Contract,
- (c) the proceeds of any claims, awards, decrees and judgements which may at any time be receivable or received by the Assignor in respect of the Contract, and
- (d) the right of the Assignor to rescind or otherwise terminate the Contract;

**Collateral Deed** means the deed with that title dated 5 February 2007 entered into between, *inter alia*, the Assignor and the Security Trustee,

**Contract** means the contract to which the Assignor is a party and details of which are set out in Part 1 of the Schedule,

**Deed** means this assignment of contract, including the Schedule;

**Default Rate** means the rate specified in paragraph 3.5 of part B, schedule 1 of the Bond Trust Deed;

**Delegate** means a delegate or sub-delegate appointed directly or indirectly under clause 7,

**Enforcement Event** means the occurrence of an Event of Default, which is continuing unremedied or unwaived, following which notice has been given pursuant to clause 17.2 of the Collateral Deed, and

**Secured Liabilities** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally, as principal or surety, or in any other capacity whatsoever) of the Assignor to the Security Trustee and/or the Senior Finance Parties under the Collateral Deed and/or any of the other Senior Finance Documents and/or any deed or document supplemental thereto, and any amounts owed by the Assignor hereunder including without prejudice to the foregoing generality all obligations to indemnify the Security Trustee and/or the Senior Finance Parties thereunder

## **1.2 Incorporated Definitions**

Except where otherwise defined in this Deed, or where the context otherwise requires, words and phrases used in this Deed with capitalised initials shall have the meaning given to them in the Collateral Deed, including

**Bond Trust Deed**  
**Event of Default**  
**Senior Finance Documents**  
**Senior Finance Parties**

## **1.3 Interpretation**

- 1.3.1 A reference to the singular shall include the plural, and vice versa, and a reference to any gender shall include all other genders
- 1.3.2 Words importing persons shall include individuals, firms, partnerships, corporations, governments, governmental bodies and departments, authorities, agencies, unincorporated bodies of persons or associations and any other organisations having legal capacity
- 1.3.3 The headings in this Deed are inserted for ease of reference only and shall not affect the interpretation or construction of this Deed.
- 1.3.4 Except where the context otherwise requires, a reference to a clause or schedule is a reference to a clause of or the schedule to this Deed and, unless it is a specific reference to part of the clause or the schedule only, is a reference to all the provisions of that clause or the schedule
- 1.3.5 Any reference to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations or other delegated or subordinate legislation made under the relevant statute.
- 1.3.6 Any reference to a "person" shall be deemed to include any permitted transferee or assignee of such person and any successor to that person or any person which has taken over the functions or responsibilities of that person
- 1.3.7 Unless otherwise provided, any notice, consent, approval, determination, agreement or waiver which requires to be issued, made or given in terms of this Deed shall require to be issued, made or given in writing, and the words "notify", "consent", "approve", "determine", "agree" or "waive", or derivations therefrom, shall be construed accordingly.
- 1.3.8 Any obligation to "procure" shall be construed as meaning to bring about or cause to happen.
- 1.3.9 References to any document of any kind whatsoever (including this Deed) shall be



construed as references to that document of any kind whatsoever (including this Deed) as amended, varied, novated or supplemented from time to time, as the case may be

- 1.3.10 References to "assets" shall include revenues and the right to revenues and property and rights of every kind, present, future and contingent and whether tangible or intangible (including uncalled share capital)
- 1.3.11 References to anything being "remedied" means remedied to the satisfaction of the Security Trustee and references to anything being "waived" means waived by the Security Trustee, in the case of waiver being in writing making specific reference to this Deed and the matter or thing to be waived.
- 1.3.12 Reference to any "obligation" of any person under this Deed or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Deed or, as the case may be, that other agreement or document (and "due", "owing" and "payable" shall be similarly construed).
- 1.3.13 Reference to a "person" means any individual, company, corporation, firm, partnership, joint venture, undertaking, association, organisation, trust, state or agency of a state (in each case, whether or not having separate legal personality).
- 1.3.14 Reference to the "Winding-Up" of a person also includes the amalgamation, reconstruction, reorganisation, administration, dissolution, liquidation, merger or consolidation of that person, and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets.
- 1.3.15 The expressions "Assignor" and "Security Trustee" shall include the permitted successors, assignees and transferees of the Assignor and the Security Trustee
- 1.3.16 Reference to "including" shall not be construed as limiting the generality of the words preceding it

## **2. PAYMENT TO THE SENIOR FINANCE PARTIES**

The Assignor undertakes to the Security Trustee that it will pay and discharge the Secured Liabilities as and when the same become due for payment and discharge in accordance with the provisions of this Deed, the Senior Finance Documents and other documents in accordance with which the Secured Liability in question has become due for payment and discharge

## **3. ASSIGNATION IN SECURITY**

### **3.1 Assignation**

The Assignor, by way of continuing security for the payment and discharge of the Secured Liabilities hereby assigns the Assigned Contract Interests to the Security Trustee as trustee for itself and the Senior Finance Parties

### **3.2 Delivery of Documents**

The Assignor shall, on execution of this Deed, deliver or cause to be delivered to the Security Trustee a copy of the Contract certified by one of the directors of the Assignor to be a true and complete copy.

### **3.3 Perfection of Security**

The Assignor shall forthwith on execution of this Deed, give notice of the assignation of the Assigned Contract Interests relevant to the Contract pursuant to this Deed to each of the other parties to the Contract and shall procure that each recipient of any such notice promptly signs and returns to the Assignor an acknowledgement of receipt of such notice in the form of the

acknowledgement set out in Part 2 of the Schedule

#### **4. THE CONTRACT**

##### **4.1 Enforcement of Rights under the Contract**

The Assignor shall, subject to the terms of the Collateral Deed (which in the case of conflict shall prevail)

4.1 1 use its reasonable endeavours to procure the due and punctual performance by each of the other parties to the Contract of their respective obligations under the Contract,

4.1 2 promptly and diligently

- (a) perform the obligations on its part contained in the Contract,
- (b) notify the Security Trustee on becoming aware of any default (howsoever described and whether by it or by any other party) under the Contract; and
- (c) institute and maintain all such proceedings and take such other steps as may be necessary or expedient to preserve or protect the interests of the Assignor and/or of the Security Trustee in and to the Contract

##### **4.2 Dealing in the Contract etc**

The Assignor undertakes to the Security Trustee that, save as otherwise provided in the Collateral Deed and in the other Senior Finance Documents, the Assignor shall not without the prior consent in writing of the Security Trustee

4.2.1 assign, transfer or otherwise dispose of or create any security over, any of the Assigned Contract Interests to or in favour of any person other than the Security Trustee;

4.2.2 amend, vary or waive (or propose or agree to any amendment, variation or waiver of) any provision of the Contract, exercise any right to rescind, cancel or terminate the Contract or release any counterparty from any obligations under the Contract;

4.2.3 waive, fail or delay to enforce any of its rights under the Contract or terminate or agree to terminate the Contract or any of them;

4.2.4 take or omit to take any action the taking or omission of which might result in the alteration or impairment of the Contract or this Deed or any of the rights under the Contract; or

4.2.5 novate, transfer or assign any of its rights under the Contract.

##### **4.3 Receipts**

4.3.1 The Security Trustee shall account to the Assignor for any monies received by the Security Trustee or any of the Senior Finance Parties in respect of the Contract before the occurrence of an Enforcement Event. If the Assignor or any person acting on its behalf receives or obtains the benefit of any monies after the occurrence of an Enforcement Event, it shall promptly account to the Security Trustee for those monies, which shall be applied by the Security Trustee to reduce the Secured Liabilities. If the Assignor or any other person acting on its behalf receives any cheque, warrant or other instrument in respect of any monies for which it would on receipt be obliged to account pursuant to this clause, it shall immediately pay those monies or procure the transfer of such instrument to the Security Trustee

4.3.2 The Security Trustee shall, promptly after the Enforcement Event referred to in clause 4.3.1 has been remedied or waived, direct each person to whom the Security Trustee has given written notice advising of the Enforcement Event to make future payments under the Contract to the Assignor unless and until the Security Trustee gives written

notice of a subsequent Enforcement Event to such person

- 4 3 3 All monies received by the Security Trustee in respect of the Contract will be held and applied by it pursuant to the terms of the Senior Finance Documents

#### **4.4 Liability to perform the Contract**

4 4 1 Notwithstanding any other provision of this Deed, the Assignor shall remain liable under the Contract to perform all the obligations assumed by it thereunder and the Security Trustee shall not be under any obligation or liability to the Assignor or any other person under or in respect of the Contract 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 Contract any provision of the Contract or to make any enquiries as to nature or sufficiency of any payment received by the Security Trustee by virtue of this Deed.

4 4 2 Without prejudice to clause 4 4.1, if the Assignor fails to perform any of its obligations under the Contract, 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 Contract, the Assignor shall, without prejudice to any other right of the Security Trustee, promptly on demand by the Security Trustee reimburse the Security Trustee for all costs and expenses properly incurred by it in so doing together with interest thereon at the Default Rate from the date such costs and expenses are incurred until the date of payment by the Assignor to the Security Trustee (but without double counting of default interest which is charged on such costs and expenses under any other agreement)

#### **5. SECURITY TO BE CONTINUING**

The security constituted by this Deed will be a continuing security for the payment and discharge of all of the Secured Liabilities notwithstanding any intermediate payment or settlement of all or any part of the Secured Liabilities or other matter or thing whatsoever and will be without prejudice and in addition to any other right, remedy or security of whatever sort which the Security Trustee may hold at any time for the Secured Liabilities or any other obligation whatsoever and will not be affected by any release, re-assignment or discharge of such other right, remedy or security

#### **6. ENFORCEMENT OF SECURITY**

At any time after the occurrence of an Enforcement Event, the Security Trustee shall be entitled, 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, to reduce and/or deal with the Assigned Contract Interests as follows

- 6.1 to exercise and do all such rights and things as the Security Trustee would be entitled to exercise and do if it were the absolute owner of the Assigned Contract Interests and if the Security Trustee had been a party to the Contract instead of the Assignor;
- 6.2 to apply any dividends, interest or other payments which may be received or receivable by the Security Trustee or by any nominee in respect of the Assigned Contract Interests as though they were proceeds of sale,
- 6 3 to settle, adjust, refer to arbitration or any other dispute resolution procedure, compromise and/or arrange any claims, accounts, disputes, questions and demands with or by any person relating in any way to the Contract and/or the Assigned Contract Interests;
- 6.4 to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Contract and/or the Assigned Contract Interests;
- 6 5 to redeem any security (whether or not having priority to the security created by this Deed) over the Contract and/or the Assigned Contract Interests and to settle the accounts of the holders of any such security; and

- 6 6 to do all such other acts and things it may consider necessary or expedient for the realisation of the Assigned Contract Interests 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 Security Trustee has the right to do and to do any such thing jointly with any other person.

## **7. RIGHTS OF THE SECURITY TRUSTEE**

- 7.1 The Security Trustee may at any time or times delegate by power of attorney or in any other manner to any person or persons any right, power or discretion exercisable by the Security Trustee under this Deed. Any such delegation may be made upon the terms (including power to sub-delegate) and subject to any regulations which the Security Trustee may think fit. The Security Trustee shall not be in any way liable or responsible to the Assignor for any loss, damage or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

- 7 2 Save as otherwise provided herein, any liberty or power which may be exercised or any determination which may be made hereunder by the Security Trustee may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons therefor.

## **8. LIABILITY OF SECURITY TRUSTEE AND DELEGATES**

- 8.1 The Security Trustee (or any Delegate) shall not in any circumstances be liable to the Assignor or any other person for any costs, charges, claims, losses, damages, liabilities or expenses relating to the realisation of the Assigned Contract Interests or from any act, default, omission or misconduct of the Security Trustee, any Delegate or their respective officers, employees or agents in relation to the Assigned Contract Interests or in connection with the Senior Finance Documents except to the extent caused by its own (or its agents', employees' or officers') gross negligence or wilful default.

- 8 2 The Assignor shall keep the Security Trustee and every Delegate indemnified from and against all costs, charges, losses, claims, proceedings, liabilities, expenses or demands suffered, incurred or made by the Security Trustee or any Delegate or their respective officers, employees or agents in connection with the preservation, exercise, enforcement or attempted preservation, exercise or enforcement of the rights of the Security Trustee under this Deed, the Contract and/or the Assigned Contract Interests except to the extent caused by its own (or its agents', employees' or officers') gross negligence or wilful default.

- 8.3 The Security Trustee shall not by virtue of clause 8 1 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.

## **9. MANDATE AND ATTORNEY**

### **9.1 Appointment**

The Assignor hereby irrevocably appoints the Security Trustee and every Delegate severally as its mandatory and attorney (with full power of substitution), on its behalf and in its name or otherwise, at such times and in such manner as the mandatory and attorney thinks fit:

- 9 1 1 to do anything which the Assignor is obliged to do (but has not done) under this Deed, and

- 9 1 2 to exercise all or any of the rights conferred on the Security Trustee or any Delegate in relation to the Assigned Contract Interests or under this Deed.

### **9.2 Ratification**

The Assignor hereby ratifies and confirms and agrees to ratify and confirm whatever any such mandatory or attorney shall properly do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this clause 9.

## **10. APPLICATION OF SECURITY PROCEEDS**

Any monies received under the powers conferred by this Deed will, subject to the repayment of any prior claims, be paid or applied in the order of priority set out in the Security Trust and Intercreditor Deed

## **11. PROTECTION OF THIRD PARTIES**

No person dealing with the Security Trustee or any Delegate shall be concerned to enquire:

- 11.1 whether the Secured Liabilities have become payable, or
- 11.2 whether any power which the Security Trustee or any Delegate is purporting to exercise has become exercisable, or
- 11.3 whether any money remains due under any of the Senior Finance Documents; or
- 11.4 how any money paid to the Security Trustee or any Delegate is applied

## **12. EXPENSES**

All reasonable costs, charges and expenses incurred hereunder prior to the occurrence of an Enforcement Event, and all costs, charges and expenses incurred hereunder following the occurrence of an Enforcement Event, by the Security Trustee and every Receiver, attorney, Delegate or other person appointed by the Security Trustee under this Deed and all other monies paid by the Security Trustee or by the Receiver in perfecting or otherwise in connection with this security or in respect of the Assigned Contract Interests, including (without prejudice to the generality of the foregoing):

- 12.1 all monies expended by the Security Trustee under clause 14;
- 12.2 all costs of the Security Trustee (on a solicitor and own client basis) of all proceedings for the enforcement of this security or for obtaining payment of monies hereby secured or arising out of or in connection with the acts authorised by clause 6,
- 12.3 all costs and losses to the Security Trustee arising in consequence of any default by the Assignor in the performance of its obligations, and
- 12.4 all administrative charges of the Security Trustee based on the time spent by it in connection with any of the foregoing,

shall be recoverable from the Assignor as a debt and may be debited to any account of the Assignor and shall bear interest accordingly and shall be a Secured Liability

## **13. RIGHT OF SET-OFF**

- 13.1 The Assignor agrees that any monies from time to time standing to its credit on any account with the Security Trustee may be retained as cover for and at any time without notice to the Assignor applied by the Security Trustee in or towards payment or satisfaction of any monies or liabilities now or hereafter from time to time due, owing or incurred by the Assignor to the Security Trustee in whatsoever manner whether presently payable or not, whether actually or contingently, whether solely or jointly with any other person and whether as principal or surety.
- 13.2 If the Security Trustee exercises any right of set-off in respect of any liability of the Assignor and that liability or any part of it is in a different currency from any credit balance against which the Security Trustee seeks to set off, the Security Trustee may use the currency of the credit balance to purchase an amount in the currency of the liability at the then prevailing spot rate of exchange and to pay out of the credit balance all costs, charges and expenses incurred by the Security Trustee in connection with that purchase

## **14. DISCHARGE OF SECURITY**

- 14.1 The Security Trustee may at any time release the Assignor from any or all of its obligations under or pursuant to this Deed and/or all or any part of the Assigned Contract Interests from

the security created by this Deed upon such terms as the Security Trustee may think fit but nothing in this Deed does or shall constitute or is intended to constitute a release of any of the Assigned Contract Interests

- 14.2 Subject to clause 14.3, if the Security Trustee (acting reasonably) is satisfied that all the Secured Liabilities have been irrevocably and unconditionally discharged in full and that no further Secured Liabilities are capable of arising, the Security Trustee shall at the request and cost of the Assignor, release to the Assignor (or to such person as it may direct) the Assigned Contract Interests from the security created by this Deed
- 14.3 If the Security Trustee (acting reasonably) considers that any amount paid or credited to it under any Senior Finance Document is capable of being avoided or otherwise set aside in the Winding-Up of the Assignor or any other person, or otherwise, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Liabilities have been irrevocably and unconditionally discharged

## **15. PROTECTION OF SECURITY**

- 15.1 The security created by 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 or the Senior Finance Parties may now or at any time hereafter hold for all or any part of the Secured Liabilities
- 15.2 No failure on the part of the Security Trustee or the Senior Finance Parties 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 Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Deed and any such other document are cumulative and not exclusive of any right or remedies provided by law
- 15.3 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
- 15.4 If the Security Trustee receives or is deemed to be affected by notice, whether actual or constructive, of any subsequent security or other interest affecting any part of the Assigned Contract Interests 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 or was deemed to have 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
- 15.5 Neither the security created by 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.
- 15.5.1 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 exchanging, varying, realising, releasing or failing to perfect or enforce any of the same, or
- 15.5.2 the Security Trustee compounding with, discharging or releasing or varying the liability of, or granting any time, indulgence 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

- 15.5.3 anything done or omitted which but for this provision might operate to exonerate the Assignor from the Secured Liabilities, or
- 15.5.4 any legal limitation, disability, incapacity or other similar circumstance relating to the Assignor.
- 15.6 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, to
- 15.6.1 take any action or obtain judgement or decree in any court against the Assignor; or
- 15.6.2 make or file any claim to rank in a Winding-Up of the Assignor, or
- 15.6.3 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 Senior Finance Documents other than this Deed.

**16. FURTHER ASSURANCE**

The Assignor shall execute and deliver all such further instruments and do and perform all such further assurances, acts and things as the Security Trustee may require for perfecting under any appropriate law the security hereby intended to be created by or pursuant to this Deed in respect of any or all of the Assigned Contract Interests or for the purposes of protecting such security or for facilitating the realisation of such assets and the exercise of all powers, authorities and discretions vested in the Security Trustee pursuant to this Deed

**17. INDEMNITY**

The Security Trustee, and every Delegate, 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 Contract Interests in respect of all liabilities and expenses properly incurred by them or him in the execution or purported execution of any of the powers, authorities or discretions vested in them or him pursuant to this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Assigned Contract Interests and the Security Trustee may retain and pay all sums in respect of the same out of any monies received under the powers conferred by this Deed.

**18. WAIVERS AND CONSENTS**

Any waiver and any consent by the Security Trustee under this Deed shall be in writing and may be given subject to any conditions thought fit by the Security Trustee. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

**19. SECURITY TRUSTEE**

The whole right, title and interest of the Security Trustee under and in terms of this Deed is held by the Security Trustee as trustee for and on behalf of itself and the Senior Finance Parties, so that in the event of any change in the number or identity of the Senior Finance Parties under and in terms of the Collateral Deed, this Deed shall continue in full force and effect

**20. ASSIGNATION**

The Security Trustee may assign the benefit of this Deed to any person without the consent of the Assignor, including any person who is to act as trustee in relation to this Deed on behalf of the Senior Finance Parties in succession to the Security Trustee in accordance with the terms of the Collateral Deed.

**21. 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 Collateral Deed and the terms of clause 22 of the Collateral Deed shall apply *mutatis mutandis* to this Deed as though that clause were set out in full herein.

**22. GOVERNING LAW**

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

22.2 The parties to this Deed irrevocably agree that the courts of Scotland are to have jurisdiction to hear and settle any dispute, suit, action or proceeding (together in this clause referred to as "Proceedings") which arises out of or in connection with this Deed, save that nothing contained in this clause shall limit the right of the Security Trustee to take Proceedings against the Assignor in any other court of competent jurisdiction. The Assignor irrevocably agrees to bring Proceedings only in the courts of Scotland.

**23. CONSENT TO REGISTRATION**

A certificate signed by any official, manager or equivalent account officer of the Security Trustee shall, in the absence of manifest error, conclusively determine the Secured Liabilities at any relevant time and shall constitute a balance and charge against the Assignor, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment. The Assignor hereby consents to the registration of this Deed and of any such certificate for preservation and execution.



**24. COUNTERPARTS**

24.1 This agreement may be executed in any number of counterparts or duplicates, each when executed and delivered shall be an original and all counterparts together shall constitute one and the same agreement.

24.2 Where executed in counterparts

24.2.1 this agreement shall not take effect until all of the counterparts have been delivered; and

24.2.2 delivery will take place when the date of delivery is agreed between the parties after execution of this agreement as evidenced by the date inserted at the end of this agreement.

IN WITNESS WHEREOF these presents consisting of this and the preceding ten pages and the Schedule in two parts appended hereto are executed as follows and where appropriate DELIVERED on 13 APRIL 2016:-

SIGNED for and on behalf of SCOTTISH BORDERS EDUCATION PARTNERSHIP LIMITED by *Albert Naafs* Director/Secretary at *Senaridge* on *12th April 2016* in the presence of

Witness:

Full Name: *ALAYNE GLEESON BA FCA*

Address

Director/Secretary

SEALED with the common seal of PRUDENTIAL TRUSTEE COMPANY LIMITED and signed on its behalf by \_\_\_\_\_, Sealing Officer at \_\_\_\_\_ on \_\_\_\_\_

Common Seal

Sealing Officer

**This is the Schedule referred to in the foregoing Assignment of Contract**

**SCHEDULE 1**

**Part 1  
The Contract**

1. Management Services Agreement dated 14 May 2013 among the Assignor, Scottish Borders Education Partnership (Holdings) Limited and Bilfinger RE Asset Management Limited (formerly Bilfinger Project Investments Europe Limited)

**Part 2**  
**Form of Notice of Assignment of Contract**

To: *[Party to Contract(s)]*

*[Date]*

Address:

Prudential Trustee Company Limited (the "**Security Trustee**") and Scottish Borders Education Partnership Limited (the "**Assignor**") give notice that, by an assignation contained in an Assignment of Contract dated on or around the date hereof between the Assignor and the Security Trustee, the Assignor assigned to the Security Trustee all its present and future right, title and interest in and to the contract listed below (the "**Contract**"), including all monies payable to the Assignor, and any claims, awards and judgments receivable or received by or in favour of the Assignor, pursuant to, under or in connection with the Contract

**Contract**

*[describe the assigned contract]*

All monies payable by you to the Assignor pursuant to under or in connection with the Contract shall continue to be paid to the Assignor unless and until you receive written notice from the Security Trustee to the contrary, in which event you should make all future payments as then directed by the Security Trustee. This authority and instruction is irrevocable without the prior written consent of the Security Trustee.

Despite the assignation referred to above, the Assignor shall remain liable to perform all its obligations under the Contract and neither the Security Trustee nor any Receiver, delegate or sub-delegate appointed by it shall at any time be under any obligation or liability to you under or in respect of the Contract.

The Assignor shall also remain entitled to exercise all its rights, powers and discretions under the Contract, and you should continue to give notices under the Contract to the Assignor, in each case unless and until you receive written notice from the Security Trustee to the contrary, in which event all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Security Trustee or as it directs.

Please acknowledge receipt of this notice of assignment and confirm that

1. you will pay all sums due under the Contract as directed by or pursuant to this notice of assignment
2. you will not claim or exercise any set-off or counterclaim in respect of the Contract
3. you have not received any other notice of any assignation or charge of the Contract or of any other interest of any third party in the Contract [(save for notice of assignment of the Contract received from Scottish Borders Education Partnership (Holdings) Limited on or around the date hereof)] and

- 4 you will comply with the other provisions of this notice of assignment by signing the acknowledgement on the attached copy of this notice of assignment and returning that copy to the Security Trustee at Laurence Poutney Hill, London, EC4R 0HH for the attention of Ian Bigwood

.....  
For and on behalf of  
Scottish Borders Education Partnership  
Limited

In the presence of.

Witness: . . . . .

Full Name: . . . . .

Address . . . . .  
.....

.....  
For and on behalf of  
Prudential Trustee Company Limited

in the presence of

Witness: . . . . .

Full Name . . . . .

Address: .....  
.....

We acknowledge receipt of the notice of assignment of which this is a copy and confirm each of the matters referred to in paragraphs 1 to 4 (inclusive) of the notice of assignment

.....  
For and on behalf of  
[Party to Contract]

In the presence of

Witness: . . . . .

Full Name . . . . .

Address: . . . . .  
.....

Date. . . . .

**EXECUTION VERSION**

**ASSIGNATION OF CONTRACT**

by

**SCOTTISH BORDERS EDUCATION PARTNERSHIP LIMITED**

in favour of

**PRUDENTIAL TRUSTEE COMPANY LIMITED**  
as Security Trustee

**MACROBERTS**

**LLP**

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## ASSIGNATION OF CONTRACT

by

- (1) **SCOTTISH BORDERS EDUCATION PARTNERSHIP LIMITED**, incorporated in England and Wales under the Companies Acts (no 05829432) and having its registered office at Part First Floor, 1 Grenfell Road, Maidenhead, Berkshire, SL6 1HN ("**Assignor**")

in favour of

- (2) **PRUDENTIAL TRUSTEE COMPANY LIMITED**, a company registered in England and Wales under the Companies Acts (no 01863305) and having its registered office at Laurence Pountney Hill, London, EC4R 0HH as security trustee for itself and each of the Senior Finance Parties ("**Security Trustee**")

### WHEREAS:

- (A) The Senior Finance Parties agreed to advance certain funds to the Assignor under the Collateral Deed
- (B) The Assignor entered into an assignment of contracts in favour of the Security Trustee on 30 January 2007 as a condition precedent to the availability of the funds under the Collateral Deed (the "**Original Assignment**") The Original Assignment made provision for further assignments to be created in respect of Further Contracts (as defined in the Original Assignment)
- (C) The Contract is a Further Contract and is accordingly assigned in accordance with this Deed

IT IS AGREED as follows

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed

**Assigned Contract Interests** means the whole right, title and interest (but not any of the obligations) of the Assignor under the Contract, together with

- (a) all the rights and benefits now or in the future arising under, pertaining to or deriving from the Contract,
- (b) all monies, debts and liabilities which now are or have been or at any time hereafter shall or may be or become due, owing or incurred to the Assignor under or in connection with the Contract,
- (c) the proceeds of any claims, awards, decrees and judgements which may at any time be receivable or received by the Assignor in respect of the Contract, and
- (d) the right of the Assignor to rescind or otherwise terminate the Contract,

**Collateral Deed** means the deed with that title dated 5 February 2007 entered into between, *inter alia*, the Assignor and the Security Trustee,

**Contract** means the contract to which the Assignor is a party and details of which are set out in Part 1 of the Schedule,

**Deed** means this assignment of contract, including the Schedule;

**Default Rate** means the rate specified in paragraph 3.5 of part B, schedule 1 of the Bond Trust Deed,

**Delegate** means a delegate or sub-delegate appointed directly or indirectly under clause 7,

**Enforcement Event** means the occurrence of an Event of Default, which is continuing unremedied or unwaived, following which notice has been given pursuant to clause 17.2 of the Collateral Deed, and

**Secured Liabilities** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally, as principal or surety, or in any other capacity whatsoever) of the Assignor to the Security Trustee and/or the Senior Finance Parties under the Collateral Deed and/or any of the other Senior Finance Documents and/or any deed or document supplemental thereto, and any amounts owed by the Assignor hereunder including without prejudice to the foregoing generality all obligations to indemnify the Security Trustee and/or the Senior Finance Parties thereunder

## **1.2 Incorporated Definitions**

Except where otherwise defined in this Deed, or where the context otherwise requires, words and phrases used in this Deed with capitalised initials shall have the meaning given to them in the Collateral Deed, including

**Bond Trust Deed**  
**Event of Default**  
**Senior Finance Documents**  
**Senior Finance Parties**

## **1.3 Interpretation**

- 1.3.1 A reference to the singular shall include the plural, and vice versa, and a reference to any gender shall include all other genders.
- 1.3.2 Words importing persons shall include individuals, firms, partnerships, corporations, governments, governmental bodies and departments, authorities, agencies, unincorporated bodies of persons or associations and any other organisations having legal capacity
- 1.3.3 The headings in this Deed are inserted for ease of reference only and shall not affect the interpretation or construction of this Deed.
- 1.3.4 Except where the context otherwise requires, a reference to a clause or schedule is a reference to a clause of or the schedule to this Deed and, unless it is a specific reference to part of the clause or the schedule only, is a reference to all the provisions of that clause or the schedule
- 1.3.5 Any reference to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations or other delegated or subordinate legislation made under the relevant statute
- 1.3.6 Any reference to a "person" shall be deemed to include any permitted transferee or assignee of such person and any successor to that person or any person which has taken over the functions or responsibilities of that person
- 1.3.7 Unless otherwise provided, any notice, consent, approval, determination, agreement or waiver which requires to be issued, made or given in terms of this Deed shall require to be issued, made or given in writing, and the words "notify", "consent", "approve", "determine", "agree" or "waive", or derivations therefrom, shall be construed accordingly
- 1.3.8 Any obligation to "procure" shall be construed as meaning to bring about or cause to happen
- 1.3.9 References to any document of any kind whatsoever (including this Deed) shall be



construed as references to that document of any kind whatsoever (including this Deed) as amended, varied, novated or supplemented from time to time, as the case may be

- 1 3 10 References to "**assets**" shall include revenues and the right to revenues and property and rights of every kind, present, future and contingent and whether tangible or intangible (including uncalled share capital)
- 1 3 11 References to anything being "**remedied**" means remedied to the satisfaction of the Security Trustee and references to anything being "**waived**" means waived by the Security Trustee, in the case of waiver being in writing making specific reference to this Deed and the matter or thing to be waived
- 1 3 12 Reference to any "**obligation**" of any person under this Deed or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Deed or, as the case may be, that other agreement or document (and "**due**", "**owing**" and "**payable**" shall be similarly construed)
- 1 3 13 Reference to a "**person**" means any individual, company, corporation, firm, partnership, joint venture, undertaking, association, organisation, trust, state or agency of a state (in each case, whether or not having separate legal personality)
- 1 3 14 Reference to the "**Winding-Up**" of a person also includes the amalgamation, reconstruction, reorganisation, administration, dissolution, liquidation, merger or consolidation of that person, and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets
- 1 3 15 The expressions "**Assignor**" and "**Security Trustee**" shall include the permitted successors, assignees and transferees of the Assignor and the Security Trustee
- 1 3 16 Reference to "**including**" shall not be construed as limiting the generality of the words preceding it

## **2. PAYMENT TO THE SENIOR FINANCE PARTIES**

The Assignor undertakes to the Security Trustee that it will pay and discharge the Secured Liabilities as and when the same become due for payment and discharge in accordance with the provisions of this Deed, the Senior Finance Documents and other documents in accordance with which the Secured Liability in question has become due for payment and discharge.

## **3. ASSIGNATION IN SECURITY**

### **3.1 Assignment**

The Assignor, by way of continuing security for the payment and discharge of the Secured Liabilities hereby assigns the Assigned Contract Interests to the Security Trustee as trustee for itself and the Senior Finance Parties

### **3.2 Delivery of Documents**

The Assignor shall, on execution of this Deed, deliver or cause to be delivered to the Security Trustee a copy of the Contract certified by one of the directors of the Assignor to be a true and complete copy

### **3.3 Perfection of Security**

The Assignor shall forthwith on execution of this Deed, give notice of the assignment of the Assigned Contract Interests relevant to the Contract pursuant to this Deed to each of the other parties to the Contract and shall procure that each recipient of any such notice promptly signs and returns to the Assignor an acknowledgement of receipt of such notice in the form of the

acknowledgement set out in Part 2 of the Schedule

#### **4. THE CONTRACT**

##### **4.1 Enforcement of Rights under the Contract**

The Assignor shall, subject to the terms of the Collateral Deed (which in the case of conflict shall prevail)

4.1.1 use its reasonable endeavours to procure the due and punctual performance by each of the other parties to the Contract of their respective obligations under the Contract;

4.1.2 promptly and diligently

(a) perform the obligations on its part contained in the Contract,

(b) notify the Security Trustee on becoming aware of any default (howsoever described and whether by it or by any other party) under the Contract, and

(c) institute and maintain all such proceedings and take such other steps as may be necessary or expedient to preserve or protect the interests of the Assignor and/or of the Security Trustee in and to the Contract

##### **4.2 Dealing in the Contract etc**

The Assignor undertakes to the Security Trustee that, save as otherwise provided in the Collateral Deed and in the other Senior Finance Documents, the Assignor shall not without the prior consent in writing of the Security Trustee

4.2.1 assign, transfer or otherwise dispose of or create any security over, any of the Assigned Contract Interests to or in favour of any person other than the Security Trustee,

4.2.2 amend, vary or waive (or propose or agree to any amendment, variation or waiver of) any provision of the Contract, exercise any right to rescind, cancel or terminate the Contract or release any counterparty from any obligations under the Contract,

4.2.3 waive, fail or delay to enforce any of its rights under the Contract or terminate or agree to terminate the Contract or any of them,

4.2.4 take or omit to take any action the taking or omission of which might result in the alteration or impairment of the Contract or this Deed or any of the rights under the Contract, or

4.2.5 novate, transfer or assign any of its rights under the Contract

##### **4.3 Receipts**

4.3.1 The Security Trustee shall account to the Assignor for any monies received by the Security Trustee or any of the Senior Finance Parties in respect of the Contract before the occurrence of an Enforcement Event. If the Assignor or any person acting on its behalf receives or obtains the benefit of any monies after the occurrence of an Enforcement Event, it shall promptly account to the Security Trustee for those monies, which shall be applied by the Security Trustee to reduce the Secured Liabilities. If the Assignor or any other person acting on its behalf receives any cheque, warrant or other instrument in respect of any monies for which it would on receipt be obliged to account pursuant to this clause, it shall immediately pay those monies or procure the transfer of such instrument to the Security Trustee

4.3.2 The Security Trustee shall, promptly after the Enforcement Event referred to in clause 4.3.1 has been remedied or waived, direct each person to whom the Security Trustee has given written notice advising of the Enforcement Event to make future payments under the Contract to the Assignor unless and until the Security Trustee gives written

notice of a subsequent Enforcement Event to such person

- 4.3.3 All monies received by the Security Trustee in respect of the Contract will be held and applied by it pursuant to the terms of the Senior Finance Documents

#### **4.4 Liability to perform the Contract**

- 4.4.1 Notwithstanding any other provision of this Deed, the Assignor shall remain liable under the Contract to perform all the obligations assumed by it thereunder and the Security Trustee shall not be under any obligation or liability to the Assignor or any other person under or in respect of the Contract 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 Contract any provision of the Contract or to make any enquiries as to nature or sufficiency of any payment received by the Security Trustee by virtue of this Deed
- 4.4.2 Without prejudice to clause 4.4.1, if the Assignor fails to perform any of its obligations under the Contract, 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 Contract, the Assignor shall, without prejudice to any other right of the Security Trustee, promptly on demand by the Security Trustee reimburse the Security Trustee for all costs and expenses properly incurred by it in so doing together with interest thereon at the Default Rate from the date such costs and expenses are incurred until the date of payment by the Assignor to the Security Trustee (but without double counting of default interest which is charged on such costs and expenses under any other agreement)

#### **5. SECURITY TO BE CONTINUING**

The security constituted by this Deed will be a continuing security for the payment and discharge of all of the Secured Liabilities notwithstanding any intermediate payment or settlement of all or any part of the Secured Liabilities or other matter or thing whatsoever and will be without prejudice and in addition to any other right, remedy or security of whatever sort which the Security Trustee may hold at any time for the Secured Liabilities or any other obligation whatsoever and will not be affected by any release, re-assignment or discharge of such other right, remedy or security

#### **6. ENFORCEMENT OF SECURITY**

At any time after the occurrence of an Enforcement Event, the Security Trustee shall be entitled, 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, to reduce and/or deal with the Assigned Contract Interests as follows

- 6.1 to exercise and do all such rights and things as the Security Trustee would be entitled to exercise and do if it were the absolute owner of the Assigned Contract Interests and if the Security Trustee had been a party to the Contract instead of the Assignor,
- 6.2 to apply any dividends, interest or other payments which may be received or receivable by the Security Trustee or by any nominee in respect of the Assigned Contract Interests as though they were proceeds of sale,
- 6.3 to settle, adjust, refer to arbitration or any other dispute resolution procedure, compromise and/or arrange any claims, accounts, disputes, questions and demands with or by any person relating in any way to the Contract and/or the Assigned Contract Interests,
- 6.4 to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Contract and/or the Assigned Contract Interests,
- 6.5 to redeem any security (whether or not having priority to the security created by this Deed) over the Contract and/or the Assigned Contract Interests and to settle the accounts of the holders of any such security, and

- 6.6 to do all such other acts and things it may consider necessary or expedient for the realisation of the Assigned Contract Interests 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 Security Trustee has the right to do and to do any such thing jointly with any other person

## **7. RIGHTS OF THE SECURITY TRUSTEE**

- 7.1 The Security Trustee may at any time or times delegate by power of attorney or in any other manner to any person or persons any right, power or discretion exercisable by the Security Trustee under this Deed. Any such delegation may be made upon the terms (including power to sub-delegate) and subject to any regulations which the Security Trustee may think fit. The Security Trustee shall not be in any way liable or responsible to the Assignor for any loss, damage or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.
- 7.2 Save as otherwise provided herein, any liberty or power which may be exercised or any determination which may be made hereunder by the Security Trustee may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons therefor.

## **8. LIABILITY OF SECURITY TRUSTEE AND DELEGATES**

- 8.1 The Security Trustee (or any Delegate) shall not in any circumstances be liable to the Assignor or any other person for any costs, charges, claims, losses, damages, liabilities or expenses relating to the realisation of the Assigned Contract Interests or from any act, default, omission or misconduct of the Security Trustee, any Delegate or their respective officers, employees or agents in relation to the Assigned Contract Interests or in connection with the Senior Finance Documents except to the extent caused by its own (or its agents', employees' or officers') gross negligence or wilful default.
- 8.2 The Assignor shall keep the Security Trustee and every Delegate indemnified from and against all costs, charges, losses, claims, proceedings, liabilities, expenses or demands suffered, incurred or made by the Security Trustee or any Delegate or their respective officers, employees or agents in connection with the preservation, exercise, enforcement or attempted preservation, exercise or enforcement of the rights of the Security Trustee under this Deed, the Contract and/or the Assigned Contract Interests except to the extent caused by its own (or its agents', employees' or officers') gross negligence or wilful default.
- 8.3 The Security Trustee shall not by virtue of clause 8.1 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.

## **9. MANDATE AND ATTORNEY**

### **9.1 Appointment**

The Assignor hereby irrevocably appoints the Security Trustee and every Delegate severally as its mandatory and attorney (with full power of substitution), on its behalf and in its name or otherwise, at such times and in such manner as the mandatory and attorney thinks fit:

- 9.1.1 to do anything which the Assignor is obliged to do (but has not done) under this Deed, and

- 9.1.2 to exercise all or any of the rights conferred on the Security Trustee or any Delegate in relation to the Assigned Contract Interests or under this Deed.

### **9.2 Ratification**

The Assignor hereby ratifies and confirms and agrees to ratify and confirm whatever any such mandatory or attorney shall properly do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this clause 9.

## **10. APPLICATION OF SECURITY PROCEEDS**

Any monies received under the powers conferred by this Deed will, subject to the repayment of any prior claims, be paid or applied in the order of priority set out in the Security Trust and Intercreditor Deed

## **11. PROTECTION OF THIRD PARTIES**

No person dealing with the Security Trustee or any Delegate shall be concerned to enquire

- 11 1 whether the Secured Liabilities have become payable, or
- 11 2 whether any power which the Security Trustee or any Delegate is purporting to exercise has become exercisable, or
- 11 3 whether any money remains due under any of the Senior Finance Documents, or
- 11 4 how any money paid to the Security Trustee or any Delegate is applied

## **12. EXPENSES**

All reasonable costs, charges and expenses incurred hereunder prior to the occurrence of an Enforcement Event, and all costs, charges and expenses incurred hereunder following the occurrence of an Enforcement Event, by the Security Trustee and every Receiver, attorney, Delegate or other person appointed by the Security Trustee under this Deed and all other monies paid by the Security Trustee or by the Receiver in perfecting or otherwise in connection with this security or in respect of the Assigned Contract Interests, including (without prejudice to the generality of the foregoing)

- 12 1 all monies expended by the Security Trustee under clause 14,
- 12 2 all costs of the Security Trustee (on a solicitor and own client basis) of all proceedings for the enforcement of this security or for obtaining payment of monies hereby secured or arising out of or in connection with the acts authorised by clause 6,
- 12 3 all costs and losses to the Security Trustee arising in consequence of any default by the Assignor in the performance of its obligations, and
- 12 4 all administrative charges of the Security Trustee based on the time spent by it in connection with any of the foregoing,

shall be recoverable from the Assignor as a debt and may be debited to any account of the Assignor and shall bear interest accordingly and shall be a Secured Liability

## **13. RIGHT OF SET-OFF**

- 13 1 The Assignor agrees that any monies from time to time standing to its credit on any account with the Security Trustee may be retained as cover for and at any time without notice to the Assignor applied by the Security Trustee in or towards payment or satisfaction of any monies or liabilities now or hereafter from time to time due, owing or incurred by the Assignor to the Security Trustee in whatsoever manner whether presently payable or not, whether actually or contingently, whether solely or jointly with any other person and whether as principal or surety
- 13 2 If the Security Trustee exercises any right of set-off in respect of any liability of the Assignor and that liability or any part of it is in a different currency from any credit balance against which the Security Trustee seeks to set off, the Security Trustee may use the currency of the credit balance to purchase an amount in the currency of the liability at the then prevailing spot rate of exchange and to pay out of the credit balance all costs, charges and expenses incurred by the Security Trustee in connection with that purchase

## **14. DISCHARGE OF SECURITY**

- 14 1 The Security Trustee may at any time release the Assignor from any or all of its obligations under or pursuant to this Deed and/or all or any part of the Assigned Contract Interests from

the security created by this Deed upon such terms as the Security Trustee may think fit but nothing in this Deed does or shall constitute or is intended to constitute a release of any of the Assigned Contract Interests

- 14.2 Subject to clause 14.3, if the Security Trustee (acting reasonably) is satisfied that all the Secured Liabilities have been irrevocably and unconditionally discharged in full and that no further Secured Liabilities are capable of arising, the Security Trustee shall at the request and cost of the Assignor, release to the Assignor (or to such person as it may direct) the Assigned Contract Interests from the security created by this Deed
- 14.3 If the Security Trustee (acting reasonably) considers that any amount paid or credited to it under any Senior Finance Document is capable of being avoided or otherwise set aside in the Winding-Up of the Assignor or any other person, or otherwise, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Liabilities have been irrevocably and unconditionally discharged

## **15. PROTECTION OF SECURITY**

- 15.1 The security created by 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 or the Senior Finance Parties may now or at any time hereafter hold for all or any part of the Secured Liabilities
- 15.2 No failure on the part of the Security Trustee or the Senior Finance Parties 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 Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Deed and any such other document are cumulative and not exclusive of any right or remedies provided by law
- 15.3 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
- 15.4 If the Security Trustee receives or is deemed to be affected by notice, whether actual or constructive, of any subsequent security or other interest affecting any part of the Assigned Contract Interests 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 or was deemed to have 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
- 15.5 Neither the security created by 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
- 15.5.1 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 exchanging, varying, realising, releasing or failing to perfect or enforce any of the same, or
- 15.5.2 the Security Trustee compounding with, discharging or releasing or varying the liability of, or granting any time, indulgence 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

- 15 5 3 anything done or omitted which but for this provision might operate to exonerate the Assignor from the Secured Liabilities, or
- 15 5 4 any legal limitation, disability, incapacity or other similar circumstance relating to the Assignor
- 15 6 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, to
  - 15 6 1 take any action or obtain judgement or decree in any court against the Assignor;
  - 15 6 2 make or file any claim to rank in a Winding-Up of the Assignor; or
  - 15.6.3 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 Senior Finance Documents other than this Deed.

## **16. FURTHER ASSURANCE**

The Assignor shall execute and deliver all such further instruments and do and perform all such further assurances, acts and things as the Security Trustee may require for perfecting under any appropriate law the security hereby intended to be created by or pursuant to this Deed in respect of any or all of the Assigned Contract Interests or for the purposes of protecting such security or for facilitating the realisation of such assets and the exercise of all powers, authorities and discretions vested in the Security Trustee pursuant to this Deed

## **17. INDEMNITY**

The Security Trustee, and every Delegate, 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 Contract Interests in respect of all liabilities and expenses properly incurred by them or him in the execution or purported execution of any of the powers, authorities or discretions vested in them or him pursuant to this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Assigned Contract Interests and the Security Trustee may retain and pay all sums in respect of the same out of any monies received under the powers conferred by this Deed

## **18. WAIVERS AND CONSENTS**

Any waiver and any consent by the Security Trustee under this Deed shall be in writing and may be given subject to any conditions thought fit by the Security Trustee. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given

## **19. SECURITY TRUSTEE**

The whole right, title and interest of the Security Trustee under and in terms of this Deed is held by the Security Trustee as trustee for and on behalf of itself and the Senior Finance Parties, so that in the event of any change in the number or identity of the Senior Finance Parties under and in terms of the Collateral Deed, this Deed shall continue in full force and effect.

## **20. ASSIGNATION**

The Security Trustee may assign the benefit of this Deed to any person without the consent of the Assignor, including any person who is to act as trustee in relation to this Deed on behalf of the Senior Finance Parties in succession to the Security Trustee in accordance with the terms of the Collateral Deed

## **21. 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 Collateral Deed and the terms of clause 22 of the Collateral Deed shall apply *mutatis mutandis* to this Deed as though that clause were set out in full herein

**22. GOVERNING LAW**

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

22.2 The parties to this Deed irrevocably agree that the courts of Scotland are to have jurisdiction to hear and settle any dispute, suit, action or proceeding (together in this clause referred to as "Proceedings") which arises out of or in connection with this Deed, save that nothing contained in this clause shall limit the right of the Security Trustee to take Proceedings against the Assignor in any other court of competent jurisdiction. The Assignor irrevocably agrees to bring Proceedings only in the courts of Scotland

**23. CONSENT TO REGISTRATION**

A certificate signed by any official, manager or equivalent account officer of the Security Trustee shall, in the absence of manifest error, conclusively determine the Secured Liabilities at any relevant time and shall constitute a balance and charge against the Assignor, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment. The Assignor hereby consents to the registration of this Deed and of any such certificate for preservation and execution



**24. COUNTERPARTS**

24 1 This agreement may be executed in any number of counterparts or duplicates, each when executed and delivered shall be an original and all counterparts together shall constitute one and the same agreement

24 2 Where executed in counterparts

24 2 1 this agreement shall not take effect until all of the counterparts have been delivered, and

24 2 2 delivery will take place when the date of delivery is agreed between the parties after execution of this agreement as evidenced by the date inserted at the end of this agreement.

IN WITNESS WHEREOF these presents consisting of this and the preceding ten pages and the Schedule in two parts appended hereto are executed as follows and where appropriate DELIVERED on 13 APRIL 2016 -

SIGNED for and on behalf of **SCOTTISH BORDERS EDUCATION PARTNERSHIP LIMITED** by  
Director/Secretary at \_\_\_\_\_ on \_\_\_\_\_ in the presence of \_\_\_\_\_

Witness

Full Name

Director/Secretary

Address

~~SEALED with the common seal of PRUDENTIAL TRUSTEE COMPANY LIMITED and signed on its behalf by \_\_\_\_\_, Sealing Officer at \_\_\_\_\_ on \_\_\_\_\_~~

~~Common Seal~~

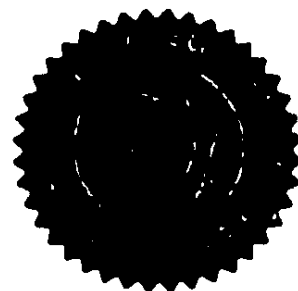
~~Sealing Officer~~

Executed as a deed by affixing the common seal of Prudential Trustee Company Limited in the presence of

Sealing Officer

at London on 11 April 2016

AA Petrou



**This is the Schedule referred to in the foregoing Assignment of Contract**

**SCHEDULE 1**

**Part 1**

**The Contract**

- 1 Management Services Agreement dated 14 May 2013 among the Assignor, Scottish Borders Education Partnership (Holdings) Limited and Bilfinger RE Asset Management Limited (formerly Bilfinger Project Investments Europe Limited).**

**Part 2**  
**Form of Notice of Assignment of Contract**

To [Party to Contract(s)]

[Date]

Address

Prudential Trustee Company Limited (the "**Security Trustee**") and Scottish Borders Education Partnership Limited (the "**Assignor**") give notice that, by an assignment contained in an Assignment of Contract dated on or around the date hereof between the Assignor and the Security Trustee, the Assignor assigned to the Security Trustee all its present and future right, title and interest in and to the contract listed below (the "**Contract**"), including all monies payable to the Assignor, and any claims, awards and judgments receivable or received by or in favour of the Assignor, pursuant to, under or in connection with the Contract

**Contract**

[describe the assigned contract]

All monies payable by you to the Assignor pursuant to under or in connection with the Contract shall continue to be paid to the Assignor unless and until you receive written notice from the Security Trustee to the contrary, in which event you should make all future payments as then directed by the Security Trustee. This authority and instruction is irrevocable without the prior written consent of the Security Trustee.

Despite the assignment referred to above, the Assignor shall remain liable to perform all its obligations under the Contract and neither the Security Trustee nor any Receiver, delegate or sub-delegate appointed by it shall at any time be under any obligation or liability to you under or in respect of the Contract

The Assignor shall also remain entitled to exercise all its rights, powers and discretions under the Contract, and you should continue to give notices under the Contract to the Assignor, in each case unless and until you receive written notice from the Security Trustee to the contrary, in which event all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Security Trustee or as it directs

Please acknowledge receipt of this notice of assignment and confirm that.

- 1      you will pay all sums due under the Contract as directed by or pursuant to this notice of assignment
- 2      you will not claim or exercise any set-off or counterclaim in respect of the Contract
- 3      you have not received any other notice of any assignment or charge of the Contract or of any other interest of any third party in the Contract [(save for notice of assignment of the Contract received from Scottish Borders Education Partnership (Holdings) Limited on or around the date hereof)] and

- 4 you will comply with the other provisions of this notice of assignation by signing the acknowledgement on the attached copy of this notice of assignation and returning that copy to the Security Trustee at Laurence Poutney Hill, London, EC4R 0HH for the attention of Ian Bigwood.

For and on behalf of  
Scottish Borders Education Partnership  
Limited

in the presence of

Witness .. .

Full Name . . . .

Address ..

For and on behalf of  
Prudential Trustee Company Limited

in the presence of

Witness . . . . .

Full Name . . . . .

Address .

.. . .

We acknowledge receipt of the notice of assignation of which this is a copy and confirm each of the matters referred to in paragraphs 1 to 4 (inclusive) of the notice of assignation.

For and on behalf of  
[Party to Contract]

in the presence of

Witness .

Full Name ... .

Address . . . .

. . . .

Date . . . .