



**Registration of a Charge**

Company name: **WCHS DBFM HOLDCO LIMITED**

Company number: **SC535579**

Received for Electronic Filing: **16/12/2016**



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**Details of Charge**

Date of creation: **14/12/2016**

Charge code: **SC53 5579 0002**

Persons entitled: **NORDDEUTSCHE LANDESBANK GIROZENTRALE (AS SECURITY AGENT)**

Brief description: **A) ANY KNOW-HOW, PATENT, TRADEMARK, SERVICE MARK, DESIGN, BUSINESS NAME, TOPOGRAPHICAL OR SIMILAR RIGHT; B) ANY COPYRIGHT OR OTHER INTELLECTUAL PROPERTY MONOPOLY RIGHT; AND C) ANY INTEREST (INCLUDING BY WAY OF LICENCE) IN ANY OF THE ABOVE, IN EACH CASE WHETHER REGISTERED OR NOT AND INCLUDING ALL APPLICATIONS FOR THE SAME.**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC**

**COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION  
FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**SHEPHERD AND WEDDERBURN LLP**



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

Company number: 535579

Charge code: SC53 5579 0002

The Registrar of Companies for Scotland hereby certifies that a charge dated 14th December 2016 and created by WCHS DBFM HOLDCO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th December 2016 .

Given at Companies House, Edinburgh on 19th December 2016

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



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



SHEPHERD+ WEDDERBURN

**EXECUTION VERSION**

**HOLDCO DEBENTURE**

between

WCHS DBFM HoldCo Limited

and

Norddeutsche Landesbank Girozentrale

(acting as Security Agent)

Relating to:

the provision of West Calder High School under the Scottish  
Government's hub Initiative

**THIS DEBENTURE IS SUBJECT TO THE TERMS OF A SECURITY TRUST AND INTERCREDITOR DEED  
DATED ON OR AROUND THE DATE OF THIS DEBENTURE AND MADE BETWEEN, AMONGST OTHERS,  
HOLDCO AND THE SECURITY AGENT.**

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This **DEED** is made on 14 December 2016

between:

- (1) **WCHS DBFM HOLDCO LIMITED** (Company Number SC535579) a company incorporated in Scotland and having its registered office at Atholl House, 51 Melville Street, Edinburgh EH3 7HL ("**HoldCo**"); and
- (2) **NORDDEUTSCHE LANDESBANK GIROZENTRALE** as security agent and trustee for the Secured Finance Parties (in this capacity, the "**Security Agent**").

**IT IS AGREED AS FOLLOWS:**

- (A) The Secured Finance Parties are willing to enter into certain finance arrangements with the Obligors on the terms and conditions set out in the Finance Documents (as defined in the Credit Agreement). One of the conditions is that HoldCo enters into this Deed.
- (B) The board of directors of HoldCo is satisfied that entering into this Deed is for the purposes and to the benefit of HoldCo and its business.
- (C) The Security Agent holds the benefit of this Deed on trust for the Secured Finance Parties on the terms of the Finance Documents.
- (D) This Deed is one of the Debentures as defined in the Credit Agreement (as defined below).
- (E) This Deed shall take effect as a deed notwithstanding that any party may execute it under hand.

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

"**Act**" means the Law of Property Act 1925;

"**Book Debts**" means all book and other debts of any nature, and all other rights to receive money (excluding the Project Accounts), now or in the future due, owing or payable to HoldCo and the benefit of all related negotiable instruments, related rights, security, guarantees and indemnities of any kind;

"**Collateral Regulations**" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226), as amended;

"**Credit Agreement**" means the credit agreement entered into on or about the date of this Deed between, amongst others, ProjectCo, HoldCo, the Security Agent and the Lenders;

"**Receiver**" means an administrative receiver, a receiver and manager or a receiver, in each case, appointed under this Deed;

"**Scottish Assets**" means all undertaking, property, assets and/or rights of HoldCo whatsoever and wheresoever both present and future located in Scotland or otherwise governed by Scots law;

"**Secured Finance Parties**" has the meaning ascribed to that term in the Security Trust and Intercreditor Deed;

**"Secured Obligations"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of any Obligor to any Secured Finance Party under each Finance Document, except for any obligation which, if it were so included, would result in this Deed contravening any law (including section 678 or 679 of the Companies Act 2006);

**"Security"** has the meaning given to that term in the Security Trust and Intercreditor Deed;

**"Security Assets"** means all assets of HoldCo the subject of any security created by or pursuant to this Deed or, in the case of any right of HoldCo under a document which cannot be secured in the manner envisaged by this Deed without the consent of a party to that document, prior to such consent being given, such right;

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which the Security Agent is satisfied that all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full.

## 1.2 Construction

- a) In this Deed, words and expressions defined (expressly or by reference) or interpreted in the Credit Agreement or the Security Trust and Intercreditor Deed shall, unless otherwise defined in this Deed, bear the same meaning in this Deed.
- b) In the event that any of the terms of this Deed conflict with the provisions of the Credit Agreement, the relevant provisions of the Credit Agreement shall prevail.
- c) In the event that any of the terms of this Deed conflict with the provisions of the Security Trust and Intercreditor Deed, the relevant provisions of the Security Trust and Intercreditor Deed shall prevail.
- d) Any obligation of any party to do something shall include an obligation to procure the same to be done and any obligation not to do something shall include an obligation not knowingly to permit, suffer or allow the same.
- e) A "Finance Document" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as modified (however fundamentally and whether or not more onerously) and includes all amendments, novations, assignments, assignations, extensions, restatements, amendments and restatements and supplements and also any change in the purpose of, any extension of or increase in any facility or addition of any new facility under that Finance Document or other agreement or instrument
- f) The term financial collateral has the meaning given to it in the Collateral Regulations.

- g) Any covenant of HoldCo under this Deed (other than a payment obligation) remains in force during the Security Period.
- h) References to this Deed include the Recitals and the schedules and references to any clause or schedule shall be to a clause or schedule contained in this Deed unless otherwise specified.
- i) Words importing the singular shall include the plural and vice versa.
- j) The terms of the Finance Documents and of any side letters between any Parties in relation to any Finance Document are incorporated in this Deed to the extent required to ensure that any purported disposition of any freehold or leasehold property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- k) If the Security Agent (acting reasonably) considers that an amount paid to a Secured Finance Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
- l) Any reference to an account shall include any sub-account of such account.
- m) Unless the context otherwise requires, a reference to a Security Asset includes:
  - i) any part of that Security Asset (including properties and revenues);
  - ii) the proceeds of sale of that Security Asset; and
  - iii) any present and future assets of that type.

### 1.3 Third Party Rights

Any person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of this Deed, except that any Receiver and Secured Finance Party may enforce any term of this Deed that is expressed to be for its benefit or in its favour.

### 1.4 Security Agent's Discretion

It is agreed that any liberty or power which may be exercised or any determination which may be made under this Deed by the Security Agent may, unless otherwise provided, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons thereof, but in any event in accordance with the Security Trust and Intercreditor Deed. For the avoidance of doubt, the Security Agent shall not be liable for any loss caused to any party for the failure to act as set out in this Deed, in the event it does not receive an instruction (in accordance with the Security Trust and Intercreditor Deed) to so act.



**CREATION OF SECURITY****2.1 General**

- a) All the Security created under this Deed:
  - i) is created in favour of the Security Agent as security trustee for each of the Secured Finance Parties;
  - ii) is created over present and future assets of HoldCo;
  - iii) is security for the payment of all the Secured Obligations; and
  - iv) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- b) If the rights of HoldCo under a document which is not a Scottish Asset cannot be secured in the manner envisaged by this Deed without the consent of a party to that document:
  - i) HoldCo must notify the Security Agent promptly;
  - ii) this Security will secure all amounts which HoldCo may receive, or has received, under or in respect of that document but exclude the document itself; and
  - iii) unless the Security Agent otherwise requires, HoldCo must use reasonable endeavours to obtain the consent of the relevant party to that document being secured under this Deed.
- c) The Security Agent holds the benefit of this Deed on trust for itself and for the Secured Finance Parties.

**2.2 Investments**

- a) HoldCo charges by way of a first fixed charge its interest in all shares, stocks, debentures, bonds, warrants, coupons or other securities and investments owned by it or held by any nominee on its behalf and all interests in collective investment schemes (other than where made or funded from amounts standing to the credit of the HoldCo Distribution Account).
- b) A reference in this Deed to any stock, share, debenture, bond, warrant, coupon or other security includes:
  - i) any dividend, interest or other distribution paid or payable (excluding any dividends or distributions paid from the ProjectCo Distribution Account or the HoldCo Distribution Account);
  - ii) any right, money or property accruing or offered at any time by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;
  - iii) any right against any clearance system; and

iv) any right under any custodian or other agreement,  
in relation to that stock, share, debenture, bond, warrant, coupon or other security.

- c) A "**clearance system**" means for the purposes of this Deed a person whose business is or includes the provision of clearance services or security accounts or any nominee or depositary for that person.

### 2.3 Plant and machinery

HoldCo charges by way of a first fixed charge all plant and machinery owned by HoldCo and its interest in any plant or machinery in its possession.

### 2.4 Credit balances

- a) HoldCo, as security for the payment or discharge of the Secured Obligations, assigns absolutely all of its rights in respect of all amounts standing to the credit of any account (other than the HoldCo Distribution Account) it has with any person and its interest in the debt represented by that account.
- b) HoldCo charges (to the extent not already assigned pursuant to Clause 2.4a)) by way of first fixed charge all of its rights in respect of all amounts standing to the credit of any account (other than the HoldCo Distribution Account) it has with any person and its interest in the debt represented by that account.

### 2.5 Book Debts

HoldCo charges by way of a first fixed charge (other than over any balance standing to the credit of the HoldCo Distribution Account from time to time):

- a) all of its Book Debts and other debts (including any debt owing under the Noteholder Support Agreement and any Security Interest in which HoldCo has an interest in respect of the Noteholder Support Agreement);
- b) all other moneys due and owing to it (including any compensation); and
- c) the benefit of all rights, securities or guarantees of any nature enjoyed or held by it in relation to any item under Clause 2.5a) or (b).

### 2.6 Insurances

- a) HoldCo, as security for the payment or discharge of the Secured Obligations, assigns absolutely all of its rights in respect of any sums payable to it pursuant to any policy of insurance, (including without limitation all of its rights to claims and returns of premium in respect of them.)
- b) HoldCo charges (to the extent not already assigned pursuant to Clause 2.6a)) by way of first fixed charge all of its rights in respect of any contract or policy of insurance taken out by it or on its behalf or in which it has an interest.

## 2.7 Other contracts

- a) HoldCo, as security for the payment or discharge of the Secured Obligations, assigns absolutely all of its rights in respect of any agreement to which it is a party (including the Project Documents and Noteholder Support Agreement), any letter of credit or bond issued in its favour and any bill of exchange or other negotiable instrument held by it.
- b) HoldCo charges (to the extent not already assigned pursuant to Clause 2.7a)) by way of first fixed charge all of its rights in respect of:
  - i) any agreement to which it is a party (including the Project Documents and Noteholder Support Agreement) except to the extent that it is subject to any fixed security created under any other term of this Clause 2;
  - ii) any letter of credit or bond issued in its favour; and
  - iii) any bill of exchange or other negotiable instrument held by it.

## 2.8 Intellectual property

HoldCo charges by way of a first fixed charge all of its rights in respect of:

- a) any know-how, patent, trademark, service mark, design, business name, topographical or similar right;
- b) any copyright or other intellectual property monopoly right; and
- c) any interest (including by way of licence) in any of the above,

in each case whether registered or not and including all applications for the same.

## 2.9 Miscellaneous

HoldCo charges by way of first fixed charge:

- a) any beneficial interest, claim or entitlement it has in or to any assets of any pension fund;
- b) its goodwill;
- c) the benefit of any authorisation (statutory or otherwise) held in connection with its business or the use of any of its assets;
- d) the right to recover and receive compensation which may be payable to it in respect of any authorisation referred to in Clause 2.9c); and
- e) its uncalled capital.

## 2.10 Excluded Property

Clauses 2.1 to 2.9 shall not operate to create or purport to create Security over any of the Scottish Assets.

### 3 EXERCISING RIGHTS BY HOLDCO

Except whilst an Event of Default has occurred and is continuing HoldCo may exercise its rights under or in relation to the assets charged by Clause 2.2 (*Investments*), Clause 2.3 (*Plant and machinery*), Clause 2.4 (*Credit balances*), Clause 2.5 (*Book Debts*), Clause 2.6 (*Insurances*), Clause 2.7 (*Other contracts*), Clause 2.8 (*Intellectual property*) and Clause 2.9 (*Miscellaneous*) provided that the exercise of those rights in the manner proposed would not result in an Event of Default.

### 4 REPRESENTATIONS

#### 4.1 Nature of security

HoldCo represents to the Security Agent for itself and on behalf of each Secured Finance Party that this Deed creates the Security it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of HoldCo or otherwise (subject to any general principles of law referred to in any legal opinion required under the Credit Agreement).

#### 4.2 Times for making representations

- a) The representations set out in this Deed are made on the date of this Deed.
- b) Unless a representation is expressed to be given at a specific date, each representation under this Deed is deemed to be repeated by HoldCo on each date during the Security Period.
- c) When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

### 5 RESTRICTIONS ON DEALINGS

HoldCo must not:

- a) create or permit to subsist any Security Interest (other than the Security Interests created pursuant to this Deed) on any Security Asset; or
- b) sell, transfer, licence, lease or otherwise dispose of any Security Asset,

except for any Permitted Security Interests.

### 6 INVESTMENTS

#### 6.1 Terms

If there is any conflict between the terms of this clause and the Credit Agreement, the Credit Agreement will prevail.

## 6.2 General

In this Clause 6:

**"Investments"** means all shares, stocks, debentures, bonds or other securities and investments included in the definition of Security Assets in Clause 1.1 (*Definitions*).

## 6.3 Investments

HoldCo represents to the Security Agent for itself and as trustee for each Secured Finance Party that:

- a) to the extent applicable, the Investments are fully paid; and
- b) it is the sole legal and beneficial owner of the Investments.

## 6.4 Deposit

HoldCo must:

- a) unless deposited with the Account Bank under the Accounts Agreement, promptly deposit with the Security Agent, or as the Security Agent may direct, all certificates and other documents of title or evidence of ownership in relation to the Investments; and
- b) promptly execute and deliver to the Security Agent all share transfers and other documents which may be requested by the Security Agent in order to enable the Security Agent or the Account Bank or their nominees to be registered as the owner or otherwise obtain a legal title to the Investments.

## 6.5 Changes to rights

HoldCo must not take or allow the taking of any action on its behalf which may result in the rights attaching to any of the Investments being altered.

## 6.6 Calls

- a) HoldCo must pay all calls or other payments due and payable in respect of any Investment.
- b) If HoldCo fails to do so, the Security Agent may pay the calls or other payments on behalf of HoldCo. HoldCo must immediately on request reimburse the Security Agent for any payment made by the Security Agent under this clause.

## 6.7 Other obligations in respect of Investments

- a)
  - i) HoldCo must comply with all requests for information which is within its knowledge and which it is required by law or the constitutional documents relating to any of its Investments to comply with. If it fails to do so, the Security Agent may elect to provide any information which it may have on behalf of HoldCo.

- ii) HoldCo must promptly supply a copy to the Security Agent of any information referred to in Clause 6.7a)i).
- b) HoldCo must comply with all other conditions and obligations assumed by it in respect of any Investment.
- c) None of the Secured Finance Parties is obliged to:
  - i) perform any obligation of HoldCo;
  - ii) make any payment;
  - iii) make any enquiry as to the nature or sufficiency of any payment received by it or HoldCo; or
  - iv) present or file any claim or take any other action to collect or enforce the payment of any amount to which it may be entitled under this Deed,

in respect of any Investment.

#### 6.8 Voting rights

- a) Before the Security becomes enforceable the voting rights, powers and other rights in respect of the Investments must (if exercisable by the Security Agent) be exercised in any manner which HoldCo may direct in writing, and HoldCo hereby indemnifies the Security Agent against any loss or liability incurred by the Security Agent as a consequence of the Security Agent acting in respect of the Investments on the direction of HoldCo, (other than any loss or liability incurred by the Security Agent as a consequence of its own gross negligence, fraud or wilful misconduct).
- b) After the Security has become enforceable, the Security Agent may exercise (in the name of HoldCo and without any further consent or authority on the part of HoldCo) any voting rights and any powers or rights which may be exercised by the legal or beneficial owner of any Investment, any person who is the holder of any Investment or otherwise.

#### 6.9 Clearance systems

HoldCo must, if so requested by the Security Agent, instruct any clearance system to transfer any Investment held by it for HoldCo or its nominee to an account of the Security Agent, the Account Bank or its nominee with that clearance system.

#### 6.10 Custodian arrangements

HoldCo must:

- a) as soon as reasonably practicable give notice to any custodian of any agreement with that custodian in respect of any Investment in a form the Security Agent may require; and

- b) use reasonable endeavours to ensure that the custodian acknowledges that notice in a form the Security Agent may require.

## **7 PROJECT DOCUMENTS AND INSURANCES**

### **7.1 Project Documents and Noteholder Support Agreement**

HoldCo must:

- a) immediately serve a notice, substantially in the form of Part 1 of Schedule 1 (*Notice to Project Document and/or Noteholder Support Agreement*), on each counterparty to a Project Document and/or Noteholder Support Agreement or other document assigned and charged under this Deed who has not entered into a Direct Agreement with the Security Agent; and
- b) use its reasonable endeavours to procure that each such counterparty promptly acknowledges such notice referred to in Clause 7.1a), substantially in the form of Part 2 of Schedule 1 (*Acknowledgement of Project Document and/or Noteholder Support Agreement Counterparty*).

### **7.2 Insurances**

HoldCo must:

- a) immediately serve a notice, substantially in the form of Part 1 of Schedule 2 (*Notice of Assignment and Charge to Insurer*), on each insurer of the Insurances which are assigned and charged pursuant to this Deed; and
- b) use its reasonable endeavours to procure that each such insurer promptly acknowledges such notice referred to in Clause 7.2a), substantially in the form of Part 2 of Schedule 2 (*Acknowledgement of Insurer*).

## **8 WHEN SECURITY BECOMES ENFORCEABLE**

### **8.1 Event of Default**

The Security will become immediately enforceable if an Event of Default has occurred and is continuing and the Security Agent, in accordance with clause 22.26 (*Acceleration*) of the Credit Agreement, gives notice to HoldCo that the Security is enforceable.

### **8.2 Enforcement**

After the Security has become enforceable, the Security Agent may in its absolute discretion enforce all or any part of the Security in any manner it sees fit, but in any event in accordance with the Security Trust and Intercreditor Deed.

**ENFORCEMENT OF SECURITY****9.1 General**

- a) The power of sale and any other power conferred on a mortgagee by law (including under section 101 of the Act and the power to appoint an administrator) will be immediately exercisable at any time after the Security has become enforceable.
- b) For the purposes of all powers implied by law, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- c) Any restriction on the power of sale (including under section 103 of the Act) or the right of a mortgagee to consolidate mortgages conferred by law (including under section 93 of the Act) does not apply to the Security.
- d) For the purposes of the Collateral Regulations, after the Security is enforceable the Security Agent may appropriate all or any part of any financial collateral which is subject to a legal or equitable mortgage created under or pursuant to this Deed in or towards satisfaction of the Secured Obligations. Where it does so, the value of the financial collateral so appropriated shall be such amount as the Security Agent so determines having taken into account advice obtained by it from an independent firm of accountants.
- e) Any powers of leasing conferred on the Security Agent by law are extended so as to authorise the Security Agent to lease, make agreements for leases, accept surrenders of leases and grant options as the Security Agent may think fit and without the need to comply with any restrictions conferred by law (including under section 99 or 100 of the Act).

**9.2 No liability as mortgagee in possession**

Neither the Security Agent nor any Receiver will be liable, by reason of entering into possession of a Security Asset:

- a) to account as mortgagee in possession or for any loss on realisation;  
or
- b) for any default or omission for which a mortgagee in possession might be liable.

**9.3 Privileges**

Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by law (including the Act) on mortgagees and receivers duly appointed under any law (including the Act).

**9.4 Protection of third parties**

No person (including a purchaser) dealing with the Security Agent or a Receiver or its or his agents will be concerned to enquire:



- a) whether the Secured Obligations have become payable;
- b) whether any power which the Security Agent or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- c) whether any money remains due under the Finance Documents; or
- d) how any money paid to the Security Agent or to that Receiver is to be applied.

#### 9.5 Redemption of prior mortgages

- a) At any time after the Security has become enforceable, the Security Agent may:
  - i) redeem any prior Security against any of its assets; and/or
  - ii) procure the transfer of that Security to itself; and/or
  - iii) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on HoldCo.
- b) HoldCo must pay to the Security Agent, immediately on demand, the costs and expenses reasonably and properly incurred by the Security Agent in connection with any such redemption and/or transfer, including the payment of any principal or interest.

#### 9.6 Contingencies

If the Security is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Security Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account, provided that if the aggregate of such moneys so placed to the credit of such suspense account shall equal or exceed the Secured Obligations the Security Agent shall promptly apply the same towards settlement of the Secured Obligations.

### 10 RECEIVER

#### 10.1 Appointment of Receiver

- a) Except as provided below, the Security Agent may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if:
  - i) the Security has become enforceable; or
  - ii) HoldCo so requests the Security Agent in writing at any time.
- b) Any appointment under Clause 10.1a) may be by deed, under seal or in writing under its hand.

- c) Any restriction on the right of a mortgagee to appoint a Receiver conferred by law (including under section 109(1) of the Act) does not apply to this Deed.
- d) The Security Agent is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under the Insolvency Act 2000 except with the leave of the court.
- e) The Security Agent may not appoint an administrative receiver (as defined in section 29(2) of the Insolvency Act 1986) over the Security Assets if the Security Agent is prohibited from so doing by section 72A of the Insolvency Act 1986 and no exception to the prohibition on appointing an administrative receiver applies.

#### 10.2 Removal

The Security Agent may by writing under its hand (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

#### 10.3 Remuneration

The Security Agent may fix the remuneration of any Receiver appointed by it and any maximum rate imposed by any law (including under section 109(6) of the Act) will not apply.

#### 10.4 Agent of HoldCo

- a) A Receiver will be deemed to be the agent of HoldCo for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. HoldCo alone is responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver.
- b) No Secured Finance Party will incur any liability (either to HoldCo or to any other person) by reason of the appointment of a Receiver or by reason of any action or inaction of a Receiver.

#### 10.5 Relationship with Security Agent

To the fullest extent allowed 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 Agent in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

### 11 POWERS OF RECEIVER

#### 11.1 General

- a) A Receiver has all of the rights, powers and discretions set out below in this clause 11 in addition to those conferred on it by any law,

including all the rights, powers and discretions conferred on a receiver under the Act and a receiver or an administrative receiver under the Insolvency Act 1986.

- b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

#### 11.2 Possession

A Receiver may take immediate possession of, get in and collect any Security Asset.

#### 11.3 Carry on business

A Receiver may carry on the business of HoldCo in any manner he thinks fit.

#### 11.4 Employees

- a) A Receiver may appoint and discharge managers, officers, agents, accountants, servants, workmen and others for the purposes of this Deed upon such terms as to remuneration or otherwise as he thinks fit.
- b) A Receiver may discharge any person appointed by HoldCo.

#### 11.5 Borrow money

A Receiver may raise and borrow money either unsecured or on the security of any Security Asset either in priority to the Security or otherwise and generally on any terms and for whatever purpose which he thinks fit.

#### 11.6 Sale of assets

- a) A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which he thinks fit.
- b) The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit.
- c) Fixtures, other than landlord's fixtures, may be severed and sold separately from the property containing them without the consent of HoldCo.

#### 11.7 Leases

A Receiver may let any Security Asset for any term and at any rent (with or without a premium) which he thinks fit and may accept a surrender of any lease or tenancy of any Security Asset on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

11.8 Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of HoldCo or relating in any way to any Security Asset.

11.9 Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit.

11.10 Receipts

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset.

11.11 Subsidiaries

A Receiver may form a Subsidiary of HoldCo and transfer to that Subsidiary any Security Asset.

11.12 Delegation

A Receiver may delegate his powers in accordance with this Deed.

11.13 Lending

A Receiver may lend money or advance credit to any customer of HoldCo.

11.14 Protection of assets

A Receiver may:

- a) effect any repair or insurance and do any other act which HoldCo might do in the ordinary conduct of its business to protect or improve any Security Asset;
- b) commence and/or complete any building operation; and
- c) apply for and maintain any planning permission, building regulation approval or any other authorisation,

in each case as he thinks fit.

11.15 Other powers

A Receiver may:

- a) do all other acts and things which he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;
- b) exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset; and

- c) use the name of HoldCo for any of the above purposes.

## **12 APPLICATION OF PROCEEDS**

Any moneys received by the Security Agent or any Receiver after this Security has become enforceable must be applied in the following order of priority:

- 12.1 in or towards payment of or provision for all costs and expenses incurred by the Security Agent or any Receiver under or in connection with this Deed and of all remuneration due to any Receiver under or in connection with this Deed;
- 12.2 in or towards payment of or provision for the Secured Obligations in accordance with the Security Trust and Intercreditor Deed; and
- 12.3 in payment of the surplus (if any) to HoldCo or other person entitled to it.

This clause is subject to the payment of any claims having priority over the Security. This clause does not prejudice the right of any Secured Finance Party to recover any shortfall from an Obligor.

## **13 EXPENSES AND INDEMNITY**

HoldCo must:

- 13.1 within five (5) Business Days of demand pay all costs, liabilities and expenses (including legal fees and any other costs, liabilities or expenses arising from any actual or alleged breach by any person of any law or regulation, whether relating to the environment or otherwise) incurred in connection with the enforcement of or the preservation of any rights under this Deed by any Secured Finance Party, Receiver, attorney, manager, agent or other person appointed by the Security Agent under this Deed;
- 13.2 subject to clause 13.1, within five (5) Business Days of demand pay all costs, liabilities and expenses (including legal fees and any other costs, liabilities or expenses arising from any actual or alleged breach by any person of any law or regulation, whether relating to the environment or otherwise) reasonably and properly incurred in connection with this Deed by any Secured Finance Party, Receiver, attorney, manager, agent or other person appointed by the Security Agent under this Deed; and
- 13.3 keep each of them indemnified against any failure or delay in paying those costs or expenses; this includes any arising from any actual or alleged breach by any person of any law or regulation, whether relating to the environment or otherwise,

save to the extent that such costs, liabilities and expenses are caused by the Security Agent's or Receiver's (or each of its delegate's or agents') own gross negligence, wilful default or fraud.

## 14 DELEGATION

### 14.1 Power of Attorney

The Security Agent or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed.

### 14.2 Terms

Any such delegation may be made upon any terms (including power to sub-delegate) which the Security Agent or any Receiver may think fit.

### 14.3 Liability

Neither the Security Agent nor any Receiver will be in any way liable or responsible to HoldCo, any Secured Finance Party or any other person for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate provided the Security Agent and/or Receiver has not been negligent in choosing such delegate or sub-delegate and that such delegate or sub-delegate has been appointed on terms such that the delegate or sub-delegate will be so liable or responsible for any such act, default, omission or misconduct which arises due to the delegate's or sub-delegate's negligence or wilful default.

## 15 FURTHER ASSURANCES

HoldCo must, at its own expense, take whatever action the Security Agent or a Receiver may require for:

- 15.1 creating, perfecting or protecting any security intended to be created by this Deed; or
- 15.2 after the security has become enforceable, facilitating the realisation of any Security Asset, or the exercise of any right, power or discretion exercisable, by the Security Agent or any Receiver or any of its delegates or sub-delegates in respect of any Security Asset.

This includes:

- a) the execution of any legal mortgage, charge, transfer, conveyance, assignment or assurance of any property, whether to the Security Agent or to its nominee; or
- b) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Security Agent may (acting reasonably) think expedient.

## 16 POWER OF ATTORNEY

### 16.1 Appointment

HoldCo, by way of security, irrevocably appoints the Security Agent, each Receiver and any of its delegates or sub-delegates separately to be its attorney (with full power to appoint substitutes and to delegate) to take any

action which HoldCo is obliged but has failed to take under this Deed. HoldCo ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause 16.

**16.2 Exercise of Powers**

The appointment effected under Clause 16.1 shall take effect immediately but the powers conferred shall only become exercisable upon the occurrence of an Event of Default which is continuing or if HoldCo does not fulfil any of its obligations under Clause 15 within 3 Business Days of notice from the Security Agent to do so.

**17 PRESERVATION OF SECURITY**

**17.1 Continuing security**

This Security is continuing and will extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or discharge in whole or in part and shall be in addition to and shall not prejudice or be prejudiced by any right of set-off, combination, lien or other rights exercisable by any Secured Finance Party as banker against HoldCo.

**17.2 Reinstatement**

- a) If any discharge (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of HoldCo under this Deed will continue as if the discharge or arrangement had not occurred.
- b) Each Secured Finance Party may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

**17.3 Waiver of defences**

Subject to Clause 20 (*Release*), neither the obligations of HoldCo under this Deed nor this Security will be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of those obligations or this Security (whether or not known to HoldCo or any Secured Finance Party). This includes:

- a) any time or waiver granted to, or composition with, any person;
- b) the release of any person under the terms of any composition or arrangement;
- c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- d) any non-presentation or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;

- e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- f) any amendment (however fundamental) of a Finance Document or any other document or security; or
- g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or security.

#### 17.4 Immediate recourse

HoldCo waives any right it may have of first requiring any Secured Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from HoldCo under this Deed.

#### 17.5 Appropriations

Each Secured Finance Party (or any trustee or agent on its behalf) may at any time during the Security Period without affecting the liability of HoldCo under this Deed:

- a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Finance Party (or any trustee or agent on its behalf) in respect of those amounts; or
- b) apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise); or
- c) hold in an interest bearing suspense account any moneys received from HoldCo or on account of the liability of HoldCo under this Deed, provided that if the aggregate of such moneys so placed to the credit of such suspense account shall equal or exceed the Secured Obligations, the Security Agent shall promptly apply the same towards settlement of the Secured Obligations.

#### 17.6 Non-competition

Unless:

- a) the Security Period has expired;
- b) permitted to do so in accordance with the Security Trust and Intercreditor Deed; or
- c) the Security Agent otherwise directs,

HoldCo will not, after a claim has been made under this Deed or any Security enforced or by virtue of any payment or performance by it under this Deed:

- i) be subrogated to any rights, security or moneys held, received or receivable by any Secured Finance Party (or any trustee or agent on its behalf);



- ii) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of HoldCo's liability under this Deed;
- iii) claim, rank, prove or vote as a creditor of any Obligor or its estate in competition with any Secured Finance Party (or any trustee or agent on its behalf); or
- iv) receive, claim or have the benefit of any payment, distribution or security from or on account of any Obligor, or exercise any right of set-off as against any Obligor.

HoldCo must hold on trust for and immediately pay or transfer to the Security Agent for the Secured Finance Parties any payment or distribution or benefit of security received by it contrary to this clause or in accordance with any directions given by the Security Agent under this clause.

#### 17.7 Additional security

The Security is in addition to and is not in any way prejudiced by any other security guarantee, indemnity and/or negotiable instrument now or subsequently held by any Secured Finance Party.

### 18 MISCELLANEOUS

#### 18.1 Covenant to pay

HoldCo must pay or discharge the Secured Obligations at the times and in the manner provided for in the Finance Documents.

#### 18.2 Tacking

Each Secured Finance Party must perform its obligations under the Finance Documents (including any obligation to make available further advances).

#### 18.3 New Accounts

- a) If any subsequent charge or other interest affects any Security Asset, any Secured Finance Party may open a new account with HoldCo.
- b) If a Secured Finance Party does not open a new interest bearing account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.
- c) As from that time all payments made to that Secured Finance Party will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Obligation provided that if the aggregate of such moneys so placed to the credit of such suspense account shall equal or exceed the Secured Obligations the Security Agent shall promptly apply the same towards settlement of the Secured Obligations.

#### 18.4 Time deposits

Without prejudice to any right of set-off any Secured Finance Party may have under any other Finance Document or otherwise, if any time deposit matures on any account HoldCo has with any Secured Finance Party within the Security Period when:

- a) this Security has become enforceable; and
- b) no Secured Obligation is due and payable,

that time deposit will automatically be renewed for any further maturity which that Secured Finance Party considers appropriate.

#### 18.5 Assignment and transfer

- a) This Deed is binding on the successors and assignees of HoldCo.
- b) HoldCo may not assign any of its rights or transfer any of its rights or obligations under this Deed.
- c) The Security Agent may (without prejudice to its right to appoint any joint trustee) assign and/or transfer all or any part of its rights and/or obligations under this Deed to any person that replaces it as Security Agent in accordance with the Credit Agreement and the Security Trust and Intercreditor Deed (or any joint trustee).

### 19 NOTICES

19.1 All notices to be given under this Deed must be in writing, and sent by personal delivery or post or facsimile to the address of the relevant party set out in this clause, provided that:

- a) any notice sent by post will be deemed (in the absence of evidence of earlier receipt), to have been delivered forty-eight hours after dispatch and in proving the fact of dispatch, it is sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities;
- b) any notice sent by personal delivery is deemed to have been delivered on the date of its delivery to its recipient;
- c) any notice sent by facsimile is deemed to have been delivered on the date of its transmission if delivered before 5:30 p.m. London time on that day provided that the sender's fax machine confirms successful transmission. If any notice is sent by facsimile after 5:30 p.m. London time on any Business Day, it shall be deemed to have been delivered on the next Business Day (provided that the sender's fax machine confirms successful transmission); and
- d) either party may by ten (10) days notice to the other party change its postal or facsimile address or addressee for receipt of such notices.

19.2 Unless notified otherwise, all notices shall be addressed to the parties as follows:

**HoldCo**

Address: WCHS DBFM HoldCo Limited  
Atholl House  
51 Melville Street  
Edinburgh  
EH3 7HL

Fax Number: n/a

Attention of: The Directors

**Security Agent**

Address: Norddeutsche Landesbank Girozentrale  
One Wood Street,  
London  
EC2V 7WT

Attention of: Head of Agency

Fax number: +44 (0)020 7454 1288

**20 RELEASE**

At the end of the Security Period but not otherwise, the Secured Finance Parties must, at the request and cost of HoldCo, take whatever action is necessary to release the Security Assets from the Security.

**21 GOVERNING LAW AND JURISDICTION**

21.1 This Deed, and any non-contractual obligations arising under or in connection with it, are governed by English law.

21.2 Clause 34 (*Enforcement*) of the Credit Agreement applies to this Deed as if it were set out in full in this Deed, *mutatis mutandis*.

**THIS DEED has been executed and delivered as a deed on the date stated at the beginning of this Deed.**

## SCHEDULE 1

### FORMS OF LETTER FOR PROJECT DOCUMENTS LETTER OF CREDIT AND NOTEHOLDER SUPPORT AGREEMENT

#### PART 1

##### Notice to Project Counterparty

To: [Contract party]

[Date]

Dear Sirs

**Debenture dated [ ] 2016 between WCHS DBFM HoldCo Limited ("HoldCo") and Norddeutsche Landesbank Girozentrale (the "Security Agent") (the "Security Document")**

- 1 This letter constitutes notice to you that under the Security Document we have assigned and charged absolutely in favour of the Security Agent all our present and future rights, title, interest and benefit in respect of [insert details of Contract] (the "**Contract**").
- 2 We confirm that:
  - (a) we will remain liable under the Contract to perform all the obligations assumed by us under the Contract;
  - (b) none of the Security Agent, its agents, any receiver or any other person will at any time be under any obligation or liability to you under or in respect of the Contract; and
  - (c) the instructions and authorities in this letter are not to be revoked or amended without the prior written consent of the Security Agent.
- 3 All moneys payable by you to HoldCo pursuant to the Contract shall be paid into account number [ ] in HoldCo's name held with [ ], sort code [ ] or such account of HoldCo as the Security Agent may specify from time to time by notice to you.
- 4 We will also remain entitled to exercise all our rights, powers and discretions under the Contract, and you should continue to give notices under the Contract to us, unless and until you receive notice from the Security Agent to the contrary stating that the security has become enforceable. In this event, all our rights, powers and discretions will be exercisable by, and notices must be given to, the Security Agent or as it directs.
- 5 Please note that we have agreed that we will not amend or waive any provision of or terminate the Contract unless in accordance with the Finance Documents (as defined in the credit agreement between, amongst others, HoldCo and the Security Agent).
- 6 This letter and any non-contractual obligations arising under or in connection with it are governed by English law.

7 Please acknowledge receipt of this letter by sending the attached acknowledgement to the Security Agent at [ ], marked for the attention of [ ].

Yours faithfully

.....  
[ ] (Authorised signatory)

## PART 2

### Acknowledgment of Project Document/ Letter of Credit/ Noteholder Support Agreement Counterparty

To: [ ]

[Date]

Dear Sirs

**Debenture dated [ ] 2016 between WCHS DBFM HoldCo Limited ("HoldCo") and Norddeutsche Landesbank Girozentrale (the "Security Agent") (the "Security Document")**

- 1 We confirm receipt from HoldCo of a notice dated [ ] of assignment and charge on the terms of the Security Document of all HoldCo's present and future rights, title, interest and benefit in respect of [insert details of the Contract] (the "**Contract**").
- 2 We confirm that we will pay all sums due, and give notices, under the Contract as directed in that notice.
- 3 We confirm that we have not received any notice of previous interest of any third party in or to the Contract, including any notice of assignment or charge of the Contract.
- 4 We undertake:
  - (a) to disclose to you without any reference to or further authority from HoldCo such information relating to the Contract as you may at any time request;
  - (b) to notify you of any breach by HoldCo of the Contract and to allow you or any of the other Secured Finance Parties (as defined in the security trust and intercreditor deed entered into between, amongst others, HoldCo and the Security Agent) to remedy that breach; and
  - (c) unless in accordance with the Finance Documents (as defined in the credit agreement between, amongst others, HoldCo and the Security Agent), not to amend or waive any provision of or cancel or terminate the Contract on request by HoldCo without your prior written consent.
- 5 This letter and any non-contractual obligations arising under or in connection with it are governed by English law.

Yours faithfully

.....  
[Counterparty]  
(Authorised signatory)

## SCHEDULE 2

### FORMS OF LETTER FOR INSURANCE

#### PART 1

##### Notice to Insurer

To: [Insurer]

[Date]

Dear Sirs

**Debenture dated [ ] 2016 between WCHS DBFM HoldCo Limited ("HoldCo") and Norddeutsche Landesbank Girozentrale (the "Security Agent") (the "Security Document")**

1 This letter constitutes notice to you that under the Security Document we have assigned and charged absolutely in favour of Security Agent all our present and future rights, title, interest and benefit in respect of the following insurance policies (which at any time may be or become payable to us pursuant thereto including the proceeds of all claims and returns of premium) held with yourselves:

(a) [ ] with policy number [ ]; and

(b) [ ] with policy number [ ],

(the "**Insurance**").

2 We confirm that:

(a) we will remain liable under the Insurance to perform all the obligations assumed by us under the Insurance;

(b) you should pay all amounts due to us in respect of the Insurance (whether by way of claims, return premiums, ex gratia settlements or otherwise) in the manner specified in the loss payee provisions in the Insurance unless and until you receive written notice from the Security Agent to the contrary, in which event you should make all future payments as then directed by the Security Agent;

(c) you should comply with the terms of any written notice or instruction in any way relating to, or purporting to relate to the Security Document, amounts payable to HoldCo under or in respect of the Insurance or the debts represented thereby, which you receive from the Security Agent without reference to or further authority from HoldCo and without any enquiry by you as to the justification for or validity of such notice or instruction;

(d) the instructions and authorities in this letter are not to be revoked or amended without the prior written consent of the Security Agent; and

(e) none of the Security Agent, its agents, any receiver or any other person will at any time be under any obligation or liability to you under or in respect of the Insurance.

- 3 We will also remain entitled to exercise all our rights, powers and discretions under the Insurance, and you should continue to give notices under the Insurance to us unless and until you receive notice from the Security Agent to the contrary stating that the security has become enforceable. In this event, all our rights, powers and discretions will be exercisable by, and notices must be given to, the Security Agent or as it directs.
- 4 Please note that we have agreed that we will not amend or waive any provision of or terminate the Insurance unless in accordance with the Finance Documents (as defined in the credit agreement entered into between, amongst others, HoldCo and the Security Agent).
- 5 This letter and any non-contractual obligations arising under or in connection with it are governed by English law.
- 6 Please acknowledge receipt of this letter by sending the attached acknowledgement to the Security Agent at [ ], marked for the attention of [ ].

Yours faithfully

.....  
[ ]  
(Authorised signatory)



## PART 2

### Acknowledgment of Insurer

To: **Norddeutsche Landesbank Girozentrale** as Security Agent

[Date]

Dear Sirs,

**Debenture dated [ ] 2016 between WCHS DBFM HoldCo Limited ("HoldCo") and Norddeutsche Landesbank Girozentrale (the "Security Agent") (the "Security Document")**

1 We confirm receipt from HoldCo of a notice dated [ ] of assignment and charge on the terms of the Security Document (the "**Notice**") of all HoldCo's present and future rights, title, interest and benefit in respect of the following insurance policies:

(a) [ ] with policy number [ ]; and

(b) [ ] with policy number [ ],

(the "**Insurance**").

2 We confirm that:

(a) we will pay all amounts due to HoldCo in respect of the Insurance as directed in that notice;

(b) we have not received any other notice of any charge or assignment of the Insurance;

(c) notwithstanding the charge, we shall continue to treat HoldCo as entitled to make and deal with claims permitted to be made by HoldCo under the Insurance unless and until we are notified by you that the security has become enforceable;

(d) after receiving notice from you that the security has become enforceable, we shall treat you as the only person entitled to make and deal with claims under the Insurance; and

(e) we will agree to and comply with the other provisions of that notice.

3 This letter and any non-contractual obligations arising under or in connection with it are governed by English law.

Yours faithfully

.....  
[Insurer]  
(Authorised signatory)

## SIGNATORIES

### HoldCo

Executed and delivered as a deed by

**WCHS DBFM HOLDCO LIMITED** acting by  
two directors

.....X  
Director

*PAUL MCGIRK*.....X  
Name

.....X  
Director


*Luana Pink*.....X  
Name

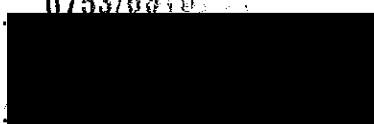
### Security Agent

Executed as a deed by

**NORDDEUTSCHE LANDESBANK  
GIROZENTRALE**

acting by its duly authorised signatories

.....X  
**Gaelle Hudson** Authorised Signatory  
0753/6310.....X

.....X  
Name  
.....X  
Authorised Signatory  
**Denis Werner**  
0753/6422.....X  
Name