



**Registration of a Charge**

Company name: **AQA EDUCATION**

Company number: **03644723**

Received for Electronic Filing: **23/12/2019**



X8KXKQ10

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**Details of Charge**

Date of creation: **23/12/2019**

Charge code: **0364 4723 0001**

Persons entitled: **VINCENT BRUCE GUTHRIE, MICHAEL DAVID HAMPTON, ELIZABETH JANE HEAD, ANDREW SUTHERLAND MACLAREN, ROBERT COX AND PTL GOVERNANCE LTD (AND ANY OTHER PERSON OR PERSONS WHO IS OR ARE FOR THE TIME BEING A TRUSTEE OF THE AQA PENSION SCHEME)**

Brief description: **N/A**

**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:

**MAYER BROWN INTERNATIONAL LLP**



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

Company number: 3644723

Charge code: 0364 4723 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd December 2019 and created by AQA EDUCATION was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd December 2019 .

Given at Companies House, Cardiff on 27th December 2019

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Dated 23 December 2019

- (1) **AQA EDUCATION** as Chargor
- (2) **THE PERSONS NAMED HEREIN** as trustees  
of the AQA Pension Scheme

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**BANK ACCOUNT SECURITY AGREEMENT**

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**MAYER | BROWN**

**LONDON**

## CONTENTS

Clause	Page
1. Definitions and interpretation .....	1
2. Covenant to pay .....	4
3. Creation of Security .....	4
4. Representations .....	5
5. Perfection of security and further assurance.....	6
6. Negative pledge and disposals.....	7
7. Specified Accounts .....	7
8. Enforcement – general provisions .....	7
9. Right of appropriation.....	9
10. Receivers.....	10
11. Powers of Security Enforcement Parties.....	11
12. Dealing with proceeds.....	12
13. General security provisions.....	13
14. Power of attorney .....	13
15. Release of security .....	14
16. Taxes .....	14
17. Changes to the Parties.....	15
18. Provisions of the Additional ConTRibutions Agreement.....	15
19. Governing law.....	15
20. Enforcement.....	15

### Schedules

1. Form of Notice of Charge .....	18
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THIS SECURITY AGREEMENT is dated 23 December 2019 and made between:

- (1) **AQA EDUCATION** (company number 03644723 and registered charity number 1073334, of Devas Street, Manchester M15 6EX) (the "**Chargor**"); and
- (2) **VINCENT BRUCE GUTHRIE, MICHAEL DAVID HAMPTON, ELIZABETH JANE HEAD, ANDREW SUTHERLAND MACLAREN, ROBERT COX and PTL GOVERNANCE LTD** (company no. 2952373, of 4<sup>th</sup> Floor, The Anchorage, 34 Bridge Street, Reading RG1 2LU as trustees of the AQA Pension Scheme and any other person or persons who is or are for the time being a trustee of the AQA Pension Scheme (each a "**Trustee**" and together, the "**Trustees**").

**BACKGROUND:**

- (A) The AQA Pension Scheme (the "**Scheme**") was established by a trust deed and rules dated 3 February 1970. The Scheme is currently governed by the provisions of the trust deed and rules as adopted by a deed of amendment dated 18 April 2012, as subsequently amended by deeds of variation dated 5 March 2013, 27 March 2014, 25 October 2015, 27 July 2016, 26 October 2016 and 21 December 2017 and a deed of variation and confirmation of appointment dated 29 October 2014.
- (B) The Chargor is the current principal employer of the Scheme and the Trustees are the current trustees of the Scheme.
- (C) As part of those arrangements and pursuant to an additional contributions agreement relating to the Scheme dated on or about the date of this Security Agreement and made between the Chargor as company and the Trustees as trustees (the "**Additional Contributions Agreement**"), the Chargor has agreed to make voluntary contributions into the Specified Account, which will be held by the Chargor with joint signing rights with the Trustees, subject to the terms of this Security Agreement.
- (D) This document is the deed of the Chargor, even if it has not been duly executed by any of the Trustees or has been executed by the Trustees but not as a deed.

**THIS DEED WITNESSES that:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Terms defined in the Additional Contributions Agreement**

Terms defined in the Additional Contributions Agreement but not in this Security Agreement shall have the same meanings in this Security Agreement as in the Additional Contributions Agreement.

**1.2 Definitions**

In addition, in this Security Agreement:

"**Additional Contributions Agreement**" has the meaning given to it in Recital (C).

**"Business Day"** means a day (other than a Saturday or a Sunday) on which banks are open for general business in London.

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the Trustees.

**"Discharge Date"** has the meaning given to it in Clause 15.1 (*Definitions relating to release of this Security*).

**"Enforcement Event"** has the meaning given to that term in Clause 8.1 (*Enforcement*).

**"IA"** means the Insolvency Act 1986.

**"Insolvency Event"** has the meaning given to that term in the Additional Contributions Agreement.

**"Losses"** means losses (including loss of profit), claims, demands, actions, proceedings, damages and other payments, costs, expenses and other liabilities of any kind.

**"LPA"** means the Law of Property Act 1925.

**"Notice of Charge"** means a notice of charge substantially in the form set out in Schedule 1 (*Form of Notice of Charge*) or in such other form as may be specified by the Trustees.

**"Party"** means a party to this Security Agreement.

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

**"Secured Obligations"** means all present and future liabilities and contractual and non-contractual obligations at any time due, owing or incurred by the Chargor to the Scheme, (including, without limitation, under Clause 7.1(a) (*Release of Charged Assets to the Scheme*) of the Additional Contributions Agreement) whether present or future, actual or contingent (howsoever incurred), but excluding any money, obligation or liability which would cause the covenant set out in Clause 2 (*Covenant to pay*) or the security which would otherwise be constituted by this Security Agreement to be unlawful or prohibited by any applicable law or regulation.

**"Security Assets"** means the assets from time to time the subject of this Security and

**"Security Asset"** means any of them and any reference to one or more of the Security Assets includes all or any part of it or each of them.

**"Security Enforcement Party"** means the Trustees, any Receiver or any Delegate.

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Specified Account"** means any account opened or to be opened by the Chargor pursuant to the terms of the Additional Contributions Agreement with the account details set out in the relevant Notice of Charge delivered to the relevant account bank.

### 1.3 Construction

- (a) In this Security Agreement, unless a contrary indication appears any reference to:
- (i) **"assets"** includes present and future properties, revenues, rights and other assets of every description. Any reference to **an asset** includes any proceeds of disposal of all or part of that asset and any other monies paid or payable in respect of that asset and any reference to a **particular type or category of assets** includes any present or future assets of that type or category;
  - (ii) a **"disposal"** includes any lease, licence, transfer, sale or other disposal of any kind (with related words being construed accordingly);
  - (iii) the **Additional Contributions Agreement** or other **document** is to the Additional Contributions Agreement or that other document as supplemented, otherwise amended, replaced or novated from time to time (however fundamental that amendment, novation or replacement may be);
  - (iv) the **masculine, feminine or neuter gender** respectively includes the other genders and the **singular** includes the plural (and vice versa);
  - (v) **"including"** means "including without limitation" (with related words being construed accordingly), **"in particular"** means "in particular but without limitation" and other **general words** shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of assets, matters or things;
  - (vi) a **Party** or other **particular person** includes its successors in title (including in the case of the Trustees any successor Trustees), permitted assignees and permitted transferees in accordance with their respective interests;
  - (vii) a **"person"** includes any individual, firm, company or other corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of them;
  - (viii) a **provision of law** is to that provision as amended, re-enacted or replaced from time to time and includes any subordinated legislation in force under it from time to time;
  - (ix) a **"Recital"** is to a statement made under the heading "Background" above and any reference to a **"Clause"** or to a **"Schedule"** is to a clause of or a schedule to this Security Agreement (as the case may be);



(x) a **"right"** includes any title, estate, interest, claim, remedy, power, authority, discretion or other right of any kind, both present and future. Any reference to **the Chargor's rights** in any document or asset (or any type or category of documents or assets) includes any rights that it holds from time to time in, to, under, in respect of or derived from that document or asset (or any document or asset of that type or in that category);

(xi) **"this Security"** means the Security constituted by or pursuant to this Security Agreement; and

(xii) **this Security Agreement** includes the Recitals and Schedules, which form part of this Security Agreement for all purposes.

(b) The index and Clause and Schedule headings are for ease of reference only.

(c) If there is any inconsistency between the terms of this Security Agreement and those of the Additional Contributions Agreement, the terms of the Additional Contributions Agreement shall prevail.

#### **1.4 Third party rights**

(a) Unless expressly provided to the contrary in this Security Agreement a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **"Third Parties Act"**) to enforce or to enjoy the benefit of any term of this Security Agreement.

(b) Notwithstanding Clause 1.4(a), no consent of any person who is not a Party is required to rescind or vary this Security Agreement at any time.

(c) Any Receiver or Delegate may, subject to this Clause 1.4 and the Third Parties Act, rely on any Clause of this Security Agreement which expressly confers rights on it.

#### **1.5 No fiduciary duties to the Chargor**

Nothing in this Security Agreement constitutes the Trustees as agent, trustee or fiduciary of the Chargor.

### **2. COVENANT TO PAY**

The Chargor covenants with the Trustees to pay and discharge, or procure the payment or discharge of the Secured Obligations when due.

### **3. CREATION OF SECURITY**

#### **3.1 General provisions regarding Security**

(a) Each of the charges created under this Security Agreement:

(i) is granted to the Trustees as trustee of the Scheme;

- (ii) secures the payment and discharge of the Secured Obligations; and
  - (iii) is made with full title guarantee.
- (b) Each fixed charge created under this Security Agreement takes effect as an equitable mortgage.

### **3.2 Accounts**

The Chargor charges by way of first fixed charge all of its rights in any credit balances on the Specified Account and the indebtedness represented by it.

## **4. REPRESENTATIONS**

### **4.1 General**

The representations set out in this Clause 4 are made by the Chargor to the Trustees.

### **4.2 Status**

It is a company limited by guarantee, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

### **4.3 Powers and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Security Agreement and the transactions contemplated by this Security Agreement.
- (b) No limit on its powers will be exceeded as a result of the grant of this Security Agreement.

### **4.4 Legal validity**

The obligations expressed to be assumed by it in this Security Agreement are legal, binding, valid and enforceable obligations.

### **4.5 Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, this Security Agreement do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any document which is binding upon it or any of its assets or constitute a default or termination event (howsoever described) under any such document.

#### **4.6 Authorisations**

All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Security Agreement have been obtained or effected (as appropriate) and are in full force and effect.

#### **4.7 Security Assets**

It is the sole legal and beneficial owner of the Security Assets, free from any Security (other than the Security created by this Security Agreement).

#### **4.8 Times for making representations**

- (a) The representations set out in this Clause 4 are made by Chargor on the date of this Security Agreement and are deemed to be repeated on each day prior to the Discharge Date.
- (b) When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

### **5. PERFECTION OF SECURITY AND FURTHER ASSURANCE**

#### **5.1 Service of notice and acknowledgement**

- (a) The Chargor shall deliver a duly completed Notice of Charge (with a copy to the Trustees) promptly (and in any event within five Business Days of this Security Agreement) to the relevant bank with which it holds the Specified Account.
- (b) The Chargor shall procure that the relevant bank to whom such Notice of Charge is delivered promptly (and in any event, within 10 Business Days of receipt) acknowledges that Notice of Charge in the form attached to it (or such other form as the Trustees may approve).

#### **5.2 Further assurance**

- (a) The Chargor shall promptly and at its own expense take such action as the Trustees or any Receiver may reasonably require:
  - (i) to improve, preserve, perfect or protect the security created (or intended to be created) by this Security Agreement or the priority of it; or
  - (ii) to facilitate the realisation or enforcement of any Security Asset or the exercise of any of the rights conferred by this Security Agreement.
- (b) The action required under Clause 5.2(a) may include the execution of any Security, any assignment or transfer over or of any asset, any notice of this Security or any other document.

6. **NEGATIVE PLEDGE AND DISPOSALS**

6.1 **Negative pledge**

The Chargor undertakes that it will not create or permit to subsist any Security over any Security Asset.

6.2 **No disposals**

The Chargor undertakes that it will not dispose of (or agree to dispose of) any Security Asset.

7. **SPECIFIED ACCOUNTS**

7.1 **Maintenance of Specified Account**

The Chargor shall not close or vary the terms of applicable to the Specified Account without the prior written consent of the Trustees.

7.2 **Withdrawals from Specified Account**

The Chargor may not make any withdrawal from a Specified Account except with the prior written consent of the Trustees.

8. **ENFORCEMENT – GENERAL PROVISIONS**

8.1 **Enforcement**

(a) On or at any time after the occurrence of:

- (i) the failure by the Chargor (A) to make any payment into the Specified Account pursuant to Clause 3 (*Payments by the Company*) of the Additional Contributions Agreement and (B) to remedy that breach within thirty days of written demand to do so;
- (ii) an Insolvency Event in relation to the Chargor; or
- (iii) a request from the Chargor to any Trustees that they exercise any of their powers under this Security Agreement,

(each, an "Enforcement Event"),

this Security shall become immediately enforceable and the Trustees may enforce this Security, and their rights under this Security Agreement, in the manner and on the terms they think fit.

(b) In particular, the Trustees may exercise without further notice in relation to the Security Assets:

- (i) the power of sale and all other powers conferred on mortgagees by the LPA or otherwise by law, in each case as extended or otherwise amended by this Security Agreement;

- (ii) to the extent that Clause 9 (*Right of appropriation*) applies, the power to appropriate the relevant Security Assets in accordance with Clause 9.2 (*Exercise of right of appropriation*); and
- (iii) (whether or not they have appointed a Receiver) any or all of the rights which are conferred by this Security Agreement (whether expressly or by implication) on a Receiver.

## 8.2 LPA provisions

- (a) The Secured Obligations shall be deemed for the purposes of all powers implied by statute to have become due and payable within the meaning of s101 LPA immediately on the execution of this Security Agreement.
- (b) The Trustees and any Receiver is entitled to all of the privileges, immunities and other rights conferred on mortgagees and receivers respectively under the LPA.
- (c) s93(1) LPA (restriction on the consolidation of mortgages), s103 LPA (restricting the power of sale), ss105, 107(2), 109(6) and 109(8) LPA (application of proceeds of sale) and s109(1) LPA (restricting the power to appoint a receiver) shall not apply to this Security.

## 8.3 Protection of third parties

- (a) No purchaser, mortgagee or other person dealing with a Security Enforcement Party shall:
  - (i) be bound to enquire whether its entitlement to exercise any of its rights has arisen or become exercisable or whether any Secured Obligations remain outstanding; or
  - (ii) be concerned as to the application of any money paid, raised or borrowed or as to the propriety or regularity of any sale by or other dealing with that Security Enforcement Party.
- (b) All of the protection to purchasers contained in ss104 and 107(1) LPA and s42(3) IA shall apply to any person purchasing from or dealing with a Security Enforcement Party as if the Secured Obligations had become due and the statutory powers of sale and of appointing a Receiver in relation to the Security Assets had arisen on the date of this Security Agreement.

## 8.4 Delegation

- (a) The Trustees and (to the extent his or her appointment so permits) a Receiver (the "Appointor") may delegate to any person or persons all or any of the rights which are exercisable by them under this Security Agreement. A delegation under this Clause may be made in any manner (including by power of attorney) and on any terms (including power to sub-delegate) which the Appointor may think fit.

- (b) A delegation under Clause 8.4(a) shall not preclude the subsequent exercise of the relevant rights by the Appointor nor preclude the Appointor from making a subsequent delegation of them to another person or from revoking that delegation.
- (c) Neither the Trustees nor any Receiver shall be liable or responsible to either Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

#### **8.5 No liability**

- (a) No Security Enforcement Party shall:
  - (i) owe any duty to the Chargor to exercise any of its rights under this Security Agreement; or
  - (ii) be liable or responsible to the Chargor for any Losses arising out of any exercise, purported exercise or non-exercise of any of its rights under this Security Agreement.
- (b) No Security Enforcement Party shall be liable as a mortgagee in possession or otherwise to account in relation to all or any part of the Security Assets for any loss on realisation or for any other action, default or omission for which it might otherwise be liable as a mortgagee in possession.

### **9. RIGHT OF APPROPRIATION**

#### **9.1 Application of right of appropriation**

This Clause 9 applies to the extent the Security Assets constitute "financial collateral" and this Security Agreement constitutes a "financial collateral arrangement" (within the meaning of the Financial Collateral Arrangements (No. 2) Regulations 2003) (the "**Regulations**").

#### **9.2 Exercise of right of appropriation**

- (a) If and to the extent that this Clause 9 applies, the Trustees may appropriate the Security Assets in or towards discharge of the Secured Obligations in such order as the Trustees may (subject to any specific provisions of the Finance Documents in this regard) determine.
- (b) If the Trustees exercise their right of appropriation then the Trustees shall for these purposes value any relevant Specified Account at the amount standing to the credit of that account, together with any accrued interest not credited to the account, at the time of the appropriation. The Parties agree that the method of valuation provided for in this Security Agreement shall constitute a commercially reasonable method of valuation for the purpose of the Regulations.

## **10. RECEIVERS**

### **10.1 Appointment of Receiver**

- (a) Subject to the remainder of this Clause 10.1, the Trustees may appoint one or (at the same or different times) more persons as a receiver of all or any part of the Security Assets if:
  - (i) this Security has become enforceable; or
  - (ii) the Chargor so requests in writing at any time.
- (b) No appointment may be made pursuant to Clause 10.1:
  - (i) solely as a result of the obtaining of, or with a view to obtaining, a moratorium under s1A IA; or
  - (ii) of an administrative receiver if that appointment would contravene s72A IA.
- (c) If at any time two or more persons hold office as Receivers, each of those Receivers shall (subject to the terms of his or her appointment) be entitled to exercise individually all of the rights conferred on Receivers under this Security Agreement to the exclusion of the other or others.

### **10.2 Remuneration**

The Trustees may fix the remuneration of any Receiver from time to time, without being limited by the maximum rate specified in s109(6) LPA.

### **10.3 Removal and replacement**

The Trustees may:

- (a) subject to obtaining a court order if required by law, remove any Receiver by written notice; and
- (b) replace (by appointment pursuant to Clause 10.1) any Receiver whose appointment has terminated.

### **10.4 Agent of the Chargor**

- (a) Any Receiver appointed under this Security Agreement whether acting solely or jointly shall be deemed to be the agent of the Chargor and to be in the same position as a receiver appointed under the LPA.
- (b) The Chargor shall be solely responsible for the acts, omissions, defaults, losses and misconduct of any Receiver and for his or her remuneration. The Trustees shall not be in any way liable or responsible either to the Chargor or to any other person for any Receiver.

## **11. POWERS OF SECURITY ENFORCEMENT PARTIES**

### **11.1 General**

- (a) A Receiver has:
  - (i) all of the rights set out below in this Clause 11;
  - (ii) all of the rights granted by the LPA to any receiver or mortgagor or mortgagee in possession; and
  - (iii) whether or not it is an administrative receiver, all of the rights granted by the IA to any administrative receiver,in each case as such rights are varied and extended by this Security Agreement.
- (b) The Trustees have after this Security has become enforceable the rights referred to in Clause 11.1(a), whether or not they have appointed a Receiver.
- (c) A Delegate has the rights referred to in Clause 11.1(a) to the extent provided in its, his or her appointment.
- (d) Any reference in this Clause 11 to any Security Assets includes, in the case of a Receiver or Delegate, only those Security Assets over or in respect of which it, he or she has been appointed.
- (e) A Security Enforcement Party may exercise its, his or her rights under this Clause 11 in such manner and on such terms as it, he or she thinks fit.

### **11.2 Disposal of Security Assets**

- (a) The right to enter into, take possession of, give up possession of, get in and collect any Security Asset.
- (b) The right to sell or otherwise dispose of any Security Asset on any terms and for any consideration as the Receiver may think fit. This consideration may include cash, debentures, obligations, shares or other security and may be payable in a lump sum or instalments.
- (c) The right to give a valid receipt for any money and execute any discharge, assurance or other document which may be proper or desirable to realise any Security Asset.

### **11.3 Contracts and proceedings**

- (a) The right to perform, repudiate, terminate, amend or enter into any contract or other document relating to any Security Asset.
- (b) The right to bring, prosecute, defend, enforce and discontinue any action, suit, arbitration or other proceedings relating to any Security Assets.



- (c) The right to pursue, settle, arrange, compromise or submit to arbitration any claim, account, dispute or demand relating to, or to make any VAT election in respect of, any Security Asset.

#### **11.4 Other rights**

- (a) The right to do any other act or thing which the Receiver may consider:
  - (i) desirable or necessary to protect, preserve or realise any Security Asset; or
  - (ii) incidental or conducive to any rights conferred on the Security Enforcement Party under or by virtue of this Security Agreement or by law.
- (b) The right to exercise and do in relation to any Security Asset all the rights and things which the Receiver would be capable of exercising or doing if it, he or she were the absolute beneficial owner of that Security Asset.
- (c) The right to use the name of the Chargor to exercise any of the rights referred to in this Clause 11.

### **12. DEALING WITH PROCEEDS**

#### **12.1 Application of proceeds of enforcement, etc**

- (a) Any monies received by the Trustees or any Receiver under this Security Agreement after this Security has become enforceable shall be applied first in settlement of the fees, costs and expenses of the Receiver (if applicable) then in payment to the Scheme for application in or towards discharging the Secured Obligations.
- (b) Notwithstanding Clause 12.1(a), until the Discharge Date the Trustees or any Receiver may:
  - (i) refrain from applying or enforcing any other monies, Security or other rights held or received by them in respect of the Secured Obligations or apply and enforce them in such manner as they see fit and the Chargor shall not be entitled to the benefit of the same; and
  - (ii) hold in an interest-bearing suspense account any monies received from the Chargor or on account of the Secured Obligations.
- (c) Clause 12.1(a) is without prejudice to the right of the Trustees to recover any shortfall from the Chargor.

### **13. GENERAL SECURITY PROVISIONS**

#### **13.1 Continuing security**

This Security is, and shall remain in force as, a continuing security for the Secured Obligations, regardless of any intermediate payment or discharge, unless and until it is released and discharged in writing by the Trustees.

#### **13.2 Additional security**

This Security is in addition to and is not in any way prejudiced by any other guarantee or Security now or subsequently held by or on behalf of the Trustees.

#### **13.3 Immediate recourse**

The Chargor waives any right it may have of first requiring the Trustees to enforce any Security or other right, or claim payment from or proceed against any other person, before claiming from it under this Security Agreement. This waiver applies irrespective of any applicable law and regulation or any provision of the Additional Contributions Agreement to the contrary.

#### **13.4 Redemption of prior Security**

- (a) The Trustees may at any time:
  - (i) redeem, or procure the transfer to themselves of, any prior Security over any Security Assets; or
  - (ii) settle and pass the accounts of the holder of any prior Security. Any accounts so settled and passed shall in the absence of manifest error be conclusive and binding on the Chargor.
- (b) All principal monies, interest, costs, expenses and other amounts incurred in and incidental to any redemption, transfer or settlement under Clause 13.4(a) shall be paid by the Chargor to the Trustees on demand.

### **14. POWER OF ATTORNEY**

The Chargor irrevocably and by way of security appoints each Security Enforcement Party severally to be its attorney, in its name or otherwise, on its behalf and as its act and deed to execute, deliver and perfect any document and do any other act or thing which may be required or which the attorney may consider desirable:

- (a) to carry out any obligation imposed on the Chargor by this Security Agreement; or
- (b) in the exercise of any rights conferred on any Security Enforcement Party by this Security Agreement or by applicable law and regulation.

The Chargor undertakes to ratify and confirm all acts and things done by an attorney in the exercise or purported exercise of this power of attorney.

## 15. RELEASE OF SECURITY

### 15.1 Definitions relating to release of this Security

- (a) In this Security Agreement, "**Discharge Date**" means the date on which the Trustees have secured all of the liabilities of the Scheme in full with relevant insurance policies.
- (b) In this Clause 15:
  - (i) "**avoided**" means avoided, restored or adjusted in whole or part under any law relating to insolvency (and "**avoidance**" shall be construed accordingly); and
  - (ii) "**settlement**" means a release, settlement, discharge, re-assignment or arrangement.

### 15.2 Release of this Security

- (a) Clause 6 (*Negative pledge and disposals*) and Clause 7 (*Accounts*) shall cease to apply on the Discharge Date.
- (b) If the Chargor so requests on or following the Discharge Date, the Trustees shall as soon as reasonably practicable (and at the Chargor's cost) release and discharge this Security.
- (c) Any settlement made by the Trustees on the faith of any assurance, security or payment shall be conditional on that assurance, security or payment not being avoided.
- (d) If any avoidance occurs as referred to in Clause 15.2(c) (including by reason of a concession or compromise referred to in Clause 15.2(e)), then the settlement given by the Trustees shall have no effect and shall not prejudice the right of the Trustees to enforce this Security in respect of the Secured Obligations. As between the Chargor and the Trustees, this Security shall (notwithstanding the settlement) be deemed to have remained at all times in effect and held by the Trustees as security for the Secured Obligations.
- (e) The Trustees may concede or compromise any claim that an assurance, security or payment is liable to avoidance.

## 16. TAXES

- (a) Any tax liability in relation to the Security Assets including tax on interest or capital gains will be borne by the Chargor and will not be payable or deducted from the Security Assets.
- (b) The Trustees will not be required to make any payment in respect of that tax liability to the Chargor, nor will the Chargor be able to set off any liability against any future payments due under this Security Agreement.

- (c) The Chargor shall pay and, within three Business Days of demand, indemnify the Trustees against any Loss that the Trustees incur in relation to all stamp duty, registration and other similar taxes payable in respect of this Security Agreement.

## **17. CHANGES TO THE PARTIES**

### **17.1 Trustees**

- (a) The Chargor acknowledges that:
  - (i) the rights and obligations of the Trustees under this Security Agreement may be transferred in whole or in part to the Pension Protection Fund as a result of the operation of Section 161 of and Schedule 6 to the Pensions Act 2004; and
  - (ii) the rights and obligations under this Security Agreement shall be binding upon and enure for the benefit of any person who is for the time being a trustee of the Scheme including any person who succeeds or replaces a trustee of the Scheme.
- (b) Each Trustee may at any time and from time to time (without consent of or notice to Chargor) assign and/or transfer any or all of its rights and/or obligations under this Security Agreement to any person or persons.

### **17.2 Chargor**

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Security Agreement.

## **18. PROVISIONS OF THE ADDITIONAL CONTRIBUTIONS AGREEMENT**

The following provisions of the Additional Contributions Agreement shall apply to this Security Agreement as if set out in full here and as if references therein to "the Company" were references to the Chargor and references to "this Deed" were to this Security Agreement and with such other changes as are appropriate to fit this context: Clause 9 (*Payments*), Clause 12 (*Enforceability*), Clause 13 (*Severability, remedies and waivers*), Clause 14 (*Counterparts*), Clause 15 (*Notices*) and Clause 16 (*Language*).

## **19. GOVERNING LAW**

This Security Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

## **20. ENFORCEMENT**

### **20.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Security Agreement (including a dispute relating to the existence, validity or termination of this Security Agreement or

any non-contractual obligations arising out of or in connection with this Security Agreement).

- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle any such dispute and accordingly no Party will argue to the contrary.
- (c) Notwithstanding Clause 20.1(a) above, no Security Enforcement Party shall be prevented from taking proceedings relating to any such dispute in any other courts with jurisdiction. To the extent allowed by law, any Security Enforcement Party may take concurrent proceedings in any number of jurisdictions.

**EXECUTION:**

The parties have shown their acceptance of the terms of this Security Agreement by executing it, in the case of the Chargor as a deed, at the end of the Schedules.

**SCHEDULE 1**  
**FORM OF NOTICE OF CHARGE**

To: *[Name and address of other bank]*

*[Date]*

Dear Sirs

**Notice of Charge**

We refer the following account:

Account Name:	[●]
Account Number:	[●]
IBAN:	[●]
Bank Name:	[●]
Bank Swift:	[●]

(the "Account").

We give you notice that by a Security Agreement (the "Security Agreement") dated [●] 20[●] and entered into by us in favour of *[Names of Trustees]* (as Trustees, as defined in the Security Agreement) (the "Trustees") we have charged all our rights in, to, under, in respect of or derived from any credit balances on the Account (the "Balances") and the indebtedness represented by the Account.

We irrevocably and unconditionally instruct and authorise you (despite any previous instructions which we may have given to the contrary):

- (a) to disclose to the Trustees (without any reference to or further authority from us and without any enquiry by you as to the justification for the disclosure), any information relating to the Account which the Trustees may, at any time and from time to time, request;
- (b)
  - (i) prior to the occurrence of an Enforcement Event (as defined in the Security Agreement), at any time and from time to time on receipt by you of any joint written instructions signed by an A Authorised Signatory acting on behalf of the Trustees and a B Authorised Signatory acting on our behalf; or
  - (ii) following the occurrence of an Enforcement Event (as defined in the Security Agreement), on receipt by you of written instructions signed by an A Authorised Signatory acting on behalf of the Trustees (without any reference to or further authority from us and without any enquiry by you as to the justification for the instruction or the validity of the same),

to:

- (A) release any amount of the Balances and to act in accordance with the relevant instruction; and

- (B) comply with the terms of any written notice, statement or instruction in any way relating or purporting to relate to the Account, the Balances or the indebtedness represented by it or them.

The A Authorised Signatories authorised to act on behalf of the Trustees and the B Authorised Signatories authorised to act on our behalf on the date of this notice (and each of their specimen signatures) are as set out below.

A Authorised Signatories – Trustees (Signature above printed name)	B Authorised Signatories – AQA Education (Signature above printed name)

We agree that:

- (i) none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with our and the Trustees' prior written consent; and
- (ii) you are authorised to disclose any information in relation to the Account to the Trustees at the Trustees' request in accordance with this notice.

Please acknowledge receipt of this notice, and confirm your agreement to it, by signing the acknowledgement on the enclosed copy letter and returning it to the Trustees at [●] marked for the attention of [●].

This letter is governed by, and shall be construed in accordance with, English law.

Yours faithfully

.....  
**AQA EDUCATION**  
 By: *[Name of signatory]*



## FORM OF ACKNOWLEDGEMENT OF NOTICE OF CHARGE

[On copy letter only]

To: [Trustees]

We acknowledge receipt of a notice dated [●] 20[●] (the "Notice") addressed to us by AQA Education (the "Chargor") regarding the following account:

Account Name: [●]  
Account Number: [●]  
IBAN: [●]  
Bank Name: [●]  
Bank Swift: [●]

(the "Account").

We confirm that:

- (a) we consent to the charge of the Account and will comply with the terms of that notice;
- (b) there does not exist in our favour, and we undertake not to create, assert, claim or exercise, any mortgage, fixed or floating charge, assignment or other security interest of any kind or any agreement or arrangement having substantially the same economic or financial effect as any of the above (including any rights of counter-claim, rights of set-off or combination of accounts over or with respect to all or any part of the Account and/or the Balances (as defined in that notice));
- (c) we have not, as at the date of this acknowledgement, received any notice that any third party has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of, the rights of the Chargor in, to, under, in respect of or derived from the Account or the Balances;
- (d) we undertake that, on our becoming aware at any time that any person other than the Trustees has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of the Account or the Balances, we will immediately give written notice of that to the Trustees;
- (e) we will not permit any amount to be withdrawn from the Account except in accordance with the Notice; and
- (f) we will not seek (or otherwise permit the Chargor) to modify, vary or amend the terms upon which the sums deposited in the Account without your prior written consent.

.....  
for and on behalf of

[Name of bank]

By: [Name of signatory]

Dated:

**EXECUTION of the Security Agreement:**

**The Chargor**

SIGNED as a deed by Mark Bedlow, )  
Director, duly authorised for and on behalf )  
of AQA EDUCATION in the presence of: )

Witness's signature:

Witness's name  
(in capitals):

LORNA RUSSELL

Witness's address:

**The Trustees**

SIGNED as a deed by **VINCENT BRUCE** )  
**GUTHRIE** in the presence of: )

Witness's signature:

Witness's name  
(in capitals):

Witness's address:

SIGNED as a deed by **MICHAEL DAVID** )  
**HAMPTON** in the presence of: )

Witness's signature:

Witness's name  
(in capitals):

Witness's address:

SIGNED as a deed by **ELIZABETH** )  
**JANE HEAD** in the presence of: )

Witness's signature:

Witness's name  
(in capitals):

Witness's address:

SIGNED as a deed by **ANDREW** )  
**SUTHERLAND MACLAREN** in the )  
presence of: )

Witness's signature:

Witness's name  
(in capitals):

Witness's address:

SIGNED as a deed by **ROBERT COX** in     )  
the presence of:                                     )

Witness's signature:

Witness's name  
(in capitals):

Witness's address:

SIGNED as a deed by                                     ),  
Director, duly authorised for and on behalf     )  
of **PTL GOVERNANCE LTD** in the                     )  
presence of:

Witness's signature:

Witness's name  
(in capitals):

Witness's address:

Dated 16 December 2019

- (1) **AQA EDUCATION** as Chargor
- (2) **THE PERSONS NAMED HEREIN** as trustees  
of the AQA Pension Scheme

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**BANK ACCOUNT SECURITY AGREEMENT**

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**MAYER | BROWN**

**LONDON**

## CONTENTS

Clause	Page
1. Definitions and interpretation .....	1
2. Covenant to pay .....	4
3. Creation of Security .....	4
4. Representations .....	5
5. Perfection of security and further assurance .....	6
6. Negative pledge and disposals .....	7
7. Specified Accounts .....	7
8. Enforcement – general provisions .....	7
9. Right of appropriation .....	9
10. Receivers .....	10
11. Powers of Security Enforcement Parties .....	11
12. Dealing with proceeds .....	12
13. General security provisions .....	13
14. Power of attorney .....	13
15. Release of security .....	14
16. Taxes .....	14
17. Changes to the Parties .....	15
18. Provisions of the Additional ConTRibutions Agreement .....	15
19. Governing law .....	15
20. Enforcement .....	15

### Schedules

1. Form of Notice of Charge .....	18
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THIS SECURITY AGREEMENT is dated 16 December 2019 and made between:

- (1) **AQA EDUCATION** (company number 03644723 and registered charity number 1073334, of Devas Street, Manchester M15 6EX) (the "**Chargor**"); and
- (2) **VINCENT BRUCE GUTHRIE, MICHAEL DAVID HAMPTON, ELIZABETH JANE HEAD, ANDREW SUTHERLAND MACLAREN, ROBERT COX and PTL GOVERNANCE LTD** (company no. 2952373, of 4<sup>th</sup> Floor, The Anchorage, 34 Bridge Street, Reading RG1 2LU as trustees of the AQA Pension Scheme and any other person or persons who is or are for the time being a trustee of the AQA Pension Scheme (each a "**Trustee**" and together, the "**Trustees**").

**BACKGROUND:**

- (A) The AQA Pension Scheme (the "**Scheme**") was established by a trust deed and rules dated 3 February 1970. The Scheme is currently governed by the provisions of the trust deed and rules as adopted by a deed of amendment dated 18 April 2012, as subsequently amended by deeds of variation dated 5 March 2013, 27 March 2014, 25 October 2015, 27 July 2016, 26 October 2016 and 21 December 2017 and a deed of variation and confirmation of appointment dated 29 October 2014.
- (B) The Chargor is the current principal employer of the Scheme and the Trustees are the current trustees of the Scheme.
- (C) As part of those arrangements and pursuant to an additional contributions agreement relating to the Scheme dated on or about the date of this Security Agreement and made between the Chargor as company and the Trustees as trustees (the "**Additional Contributions Agreement**"), the Chargor has agreed to make voluntary contributions into the Specified Account, which will be held by the Chargor with joint signing rights with the Trustees, subject to the terms of this Security Agreement.
- (D) This document is the deed of the Chargor, even if it has not been duly executed by any of the Trustees or has been executed by the Trustees but not as a deed.

**THIS DEED WITNESSES that:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Terms defined in the Additional Contributions Agreement**

Terms defined in the Additional Contributions Agreement but not in this Security Agreement shall have the same meanings in this Security Agreement as in the Additional Contributions Agreement.

**1.2 Definitions**

In addition, in this Security Agreement:

"**Additional Contributions Agreement**" has the meaning given to it in Recital (C).

**"Business Day"** means a day (other than a Saturday or a Sunday) on which banks are open for general business in London.

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the Trustees.

**"Discharge Date"** has the meaning given to it in Clause 15.1 (*Definitions relating to release of this Security*).

**"Enforcement Event"** has the meaning given to that term in Clause 8.1 (*Enforcement*).

**"IA"** means the Insolvency Act 1986.

**"Insolvency Event"** has the meaning given to that term in the Additional Contributions Agreement.

**"Losses"** means losses (including loss of profit), claims, demands, actions, proceedings, damages and other payments, costs, expenses and other liabilities of any kind.

**"LPA"** means the Law of Property Act 1925.

**"Notice of Charge"** means a notice of charge substantially in the form set out in Schedule 1 (*Form of Notice of Charge*) or in such other form as may be specified by the Trustees.

**"Party"** means a party to this Security Agreement.

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

**"Secured Obligations"** means all present and future liabilities and contractual and non-contractual obligations at any time due, owing or incurred by the Chargor to the Scheme, (including, without limitation, under Clause 7.1(a) (*Release of Charged Assets to the Scheme*) of the Additional Contributions Agreement) whether present or future, actual or contingent (howsoever incurred), but excluding any money, obligation or liability which would cause the covenant set out in Clause 2 (*Covenant to pay*) or the security which would otherwise be constituted by this Security Agreement to be unlawful or prohibited by any applicable law or regulation.

**"Security Assets"** means the assets from time to time the subject of this Security and  
**"Security Asset"** means any of them and any reference to one or more of the Security Assets includes all or any part of it or each of them.

**"Security Enforcement Party"** means the Trustees, any Receiver or any Delegate.

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.



**"Specified Account"** means any account opened or to be opened by the Chargor pursuant to the terms of the Additional Contributions Agreement with the account details set out in the relevant Notice of Charge delivered to the relevant account bank.

### 1.3 Construction

- (a) In this Security Agreement, unless a contrary indication appears any reference to:
- (i) **"assets"** includes present and future properties, revenues, rights and other assets of every description. Any reference to **an asset** includes any proceeds of disposal of all or part of that asset and any other monies paid or payable in respect of that asset and any reference to a **particular type or category of assets** includes any present or future assets of that type or category;
  - (ii) a **"disposal"** includes any lease, licence, transfer, sale or other disposal of any kind (with related words being construed accordingly);
  - (iii) the **Additional Contributions Agreement** or other **document** is to the Additional Contributions Agreement or that other document as supplemented, otherwise amended, replaced or novated from time to time (however fundamental that amendment, novation or replacement may be);
  - (iv) the masculine, feminine or neuter **gender** respectively includes the other genders and the **singular** includes the plural (and vice versa);
  - (v) **"including"** means "including without limitation" (with related words being construed accordingly), **"in particular"** means "in particular but without limitation" and other **general words** shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of assets, matters or things;
  - (vi) a **Party** or other **particular person** includes its successors in title (including in the case of the Trustees any successor Trustees), permitted assignees and permitted transferees in accordance with their respective interests;
  - (vii) a **"person"** includes any individual, firm, company or other corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of them;
  - (viii) a **provision of law** is to that provision as amended, re-enacted or replaced from time to time and includes any subordinated legislation in force under it from time to time;
  - (ix) a **"Recital"** is to a statement made under the heading "Background" above and any reference to a **"Clause"** or to a **"Schedule"** is to a clause of or a schedule to this Security Agreement (as the case may be);

- (x) a **"right"** includes any title, estate, interest, claim, remedy, power, authority, discretion or other right of any kind, both present and future. Any reference to **the Chargor's rights** in any document or asset (or any type or category of documents or assets) includes any rights that it holds from time to time in, to, under, in respect of or derived from that document or asset (or any document or asset of that type or in that category);
- (xi) **"this Security"** means the Security constituted by or pursuant to this Security Agreement; and
- (xii) **this Security Agreement** includes the Recitals and Schedules, which form part of this Security Agreement for all purposes.
- (b) The index and Clause and Schedule headings are for ease of reference only.
- (c) If there is any inconsistency between the terms of this Security Agreement and those of the Additional Contributions Agreement, the terms of the Additional Contributions Agreement shall prevail.

#### 1.4 **Third party rights**

- (a) Unless expressly provided to the contrary in this Security Agreement a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **"Third Parties Act"**) to enforce or to enjoy the benefit of any term of this Security Agreement.
- (b) Notwithstanding Clause 1.4(a), no consent of any person who is not a Party is required to rescind or vary this Security Agreement at any time.
- (c) Any Receiver or Delegate may, subject to this Clause 1.4 and the Third Parties Act, rely on any Clause of this Security Agreement which expressly confers rights on it.

#### 1.5 **No fiduciary duties to the Chargor**

Nothing in this Security Agreement constitutes the Trustees as agent, trustee or fiduciary of the Chargor.

### 2. **COVENANT TO PAY**

The Chargor covenants with the Trustees to pay and discharge, or procure the payment or discharge of the Secured Obligations when due.

### 3. **CREATION OF SECURITY**

#### 3.1 **General provisions regarding Security**

- (a) Each of the charges created under this Security Agreement:
  - (i) is granted to the Trustees as trustee of the Scheme;

- (ii) secures the payment and discharge of the Secured Obligations; and
  - (iii) is made with full title guarantee.
- (b) Each fixed charge created under this Security Agreement takes effect as an equitable mortgage.

### **3.2 Accounts**

The Chargor charges by way of first fixed charge all of its rights in any credit balances on the Specified Account and the indebtedness represented by it.

## **4. REPRESENTATIONS**

### **4.1 General**

The representations set out in this Clause 4 are made by the Chargor to the Trustees.

### **4.2 Status**

It is a company limited by guarantee, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

### **4.3 Powers and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Security Agreement and the transactions contemplated by this Security Agreement.
- (b) No limit on its powers will be exceeded as a result of the grant of this Security Agreement.

### **4.4 Legal validity**

The obligations expressed to be assumed by it in this Security Agreement are legal, binding, valid and enforceable obligations.

### **4.5 Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, this Security Agreement do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any document which is binding upon it or any of its assets or constitute a default or termination event (howsoever described) under any such document.

#### **4.6 Authorisations**

All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Security Agreement have been obtained or effected (as appropriate) and are in full force and effect.

#### **4.7 Security Assets**

It is the sole legal and beneficial owner of the Security Assets, free from any Security (other than the Security created by this Security Agreement).

#### **4.8 Times for making representations**

- (a) The representations set out in this Clause 4 are made by Chargor on the date of this Security Agreement and are deemed to be repeated on each day prior to the Discharge Date.
- (b) When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

### **5. PERFECTION OF SECURITY AND FURTHER ASSURANCE**

#### **5.1 Service of notice and acknowledgement**

- (a) The Chargor shall deliver a duly completed Notice of Charge (with a copy to the Trustees) promptly (and in any event within five Business Days of this Security Agreement) to the relevant bank with which it holds the Specified Account.
- (b) The Chargor shall procure that the relevant bank to whom such Notice of Charge is delivered promptly (and in any event, within 10 Business Days of receipt) acknowledges that Notice of Charge in the form attached to it (or such other form as the Trustees may approve).

#### **5.2 Further assurance**

- (a) The Chargor shall promptly and at its own expense take such action as the Trustees or any Receiver may reasonably require:
  - (i) to improve, preserve, perfect or protect the security created (or intended to be created) by this Security Agreement or the priority of it; or
  - (ii) to facilitate the realisation or enforcement of any Security Asset or the exercise of any of the rights conferred by this Security Agreement.
- (b) The action required under Clause 5.2(a) may include the execution of any Security, any assignment or transfer over or of any asset, any notice of this Security or any other document.

**6. NEGATIVE PLEDGE AND DISPOSALS**

**6.1 Negative pledge**

The Chargor undertakes that it will not create or permit to subsist any Security over any Security Asset.

**6.2 No disposals**

The Chargor undertakes that it will not dispose of (or agree to dispose of) any Security Asset.

**7. SPECIFIED ACCOUNTS**

**7.1 Maintenance of Specified Account**

The Chargor shall not close or vary the terms of applicable to the Specified Account without the prior written consent of the Trustees.

**7.2 Withdrawals from Specified Account**

The Chargor may not make any withdrawal from a Specified Account except with the prior written consent of the Trustees.

**8. ENFORCEMENT – GENERAL PROVISIONS**

**8.1 Enforcement**

(a) On or at any time after the occurrence of:

(i) the failure by the Chargor (A) to make any payment into the Specified Account pursuant to Clause 3 (*Payments by the Company*) of the Additional Contributions Agreement and (B) to remedy that breach within thirty days of written demand to do so;

(ii) an Insolvency Event in relation to the Chargor; or

(iii) a request from the Chargor to any Trustees that they exercise any of their powers under this Security Agreement,

(each, an "Enforcement Event"),

this Security shall become immediately enforceable and the Trustees may enforce this Security, and their rights under this Security Agreement, in the manner and on the terms they think fit.

(b) In particular, the Trustees may exercise without further notice in relation to the Security Assets:

(i) the power of sale and all other powers conferred on mortgagees by the LPA or otherwise by law, in each case as extended or otherwise amended by this Security Agreement;

- (ii) to the extent that Clause 9 (*Right of appropriation*) applies, the power to appropriate the relevant Security Assets in accordance with Clause 9.2 (*Exercise of right of appropriation*); and
- (iii) (whether or not they have appointed a Receiver) any or all of the rights which are conferred by this Security Agreement (whether expressly or by implication) on a Receiver.

## 8.2 LPA provisions

- (a) The Secured Obligations shall be deemed for the purposes of all powers implied by statute to have become due and payable within the meaning of s101 LPA immediately on the execution of this Security Agreement.
- (b) The Trustees and any Receiver is entitled to all of the privileges, immunities and other rights conferred on mortgagees and receivers respectively under the LPA.
- (c) s93(1) LPA (restriction on the consolidation of mortgages), s103 LPA (restricting the power of sale), ss105, 107(2), 109(6) and 109(8) LPA (application of proceeds of sale) and s109(1) LPA (restricting the power to appoint a receiver) shall not apply to this Security.

## 8.3 Protection of third parties

- (a) No purchaser, mortgagee or other person dealing with a Security Enforcement Party shall:
  - (i) be bound to enquire whether its entitlement to exercise any of its rights has arisen or become exercisable or whether any Secured Obligations remain outstanding; or
  - (ii) be concerned as to the application of any money paid, raised or borrowed or as to the propriety or regularity of any sale by or other dealing with that Security Enforcement Party.
- (b) All of the protection to purchasers contained in ss104 and 107(1) LPA and s42(3) IA shall apply to any person purchasing from or dealing with a Security Enforcement Party as if the Secured Obligations had become due and the statutory powers of sale and of appointing a Receiver in relation to the Security Assets had arisen on the date of this Security Agreement.

## 8.4 Delegation

- (a) The Trustees and (to the extent his or her appointment so permits) a Receiver (the "**Appointor**") may delegate to any person or persons all or any of the rights which are exercisable by them under this Security Agreement. A delegation under this Clause may be made in any manner (including by power of attorney) and on any terms (including power to sub-delegate) which the Appointor may think fit.

- (b) A delegation under Clause 8.4(a) shall not preclude the subsequent exercise of the relevant rights by the Appointor nor preclude the Appointor from making a subsequent delegation of them to another person or from revoking that delegation.
- (c) Neither the Trustees nor any Receiver shall be liable or responsible to either Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

#### **8.5 No liability**

- (a) No Security Enforcement Party shall:
  - (i) owe any duty to the Chargor to exercise any of its rights under this Security Agreement; or
  - (ii) be liable or responsible to the Chargor for any Losses arising out of any exercise, purported exercise or non-exercise of any of its rights under this Security Agreement.
- (b) No Security Enforcement Party shall be liable as a mortgagee in possession or otherwise to account in relation to all or any part of the Security Assets for any loss on realisation or for any other action, default or omission for which it might otherwise be liable as a mortgagee in possession.

### **9. RIGHT OF APPROPRIATION**

#### **9.1 Application of right of appropriation**

This Clause 9 applies to the extent the Security Assets constitute "financial collateral" and this Security Agreement constitutes a "financial collateral arrangement" (within the meaning of the Financial Collateral Arrangements (No. 2) Regulations 2003) (the "Regulations").

#### **9.2 Exercise of right of appropriation**

- (a) If and to the extent that this Clause 9 applies, the Trustees may appropriate the Security Assets in or towards discharge of the Secured Obligations in such order as the Trustees may (subject to any specific provisions of the Finance Documents in this regard) determine.
- (b) If the Trustees exercise their right of appropriation then the Trustees shall for these purposes value any relevant Specified Account at the amount standing to the credit of that account, together with any accrued interest not credited to the account, at the time of the appropriation. The Parties agree that the method of valuation provided for in this Security Agreement shall constitute a commercially reasonable method of valuation for the purpose of the Regulations.

## **10. RECEIVERS**

### **10.1 Appointment of Receiver**

- (a) Subject to the remainder of this Clause 10.1, the Trustees may appoint one or (at the same or different times) more persons as a receiver of all or any part of the Security Assets if:
  - (i) this Security has become enforceable; or
  - (ii) the Chargor so requests in writing at any time.
- (b) No appointment may be made pursuant to Clause 10.1:
  - (i) solely as a result of the obtaining of, or with a view to obtaining, a moratorium under s1A IA; or
  - (ii) of an administrative receiver if that appointment would contravene s72A IA.
- (c) If at any time two or more persons hold office as Receivers, each of those Receivers shall (subject to the terms of his or her appointment) be entitled to exercise individually all of the rights conferred on Receivers under this Security Agreement to the exclusion of the other or others.

### **10.2 Remuneration**

The Trustees may fix the remuneration of any Receiver from time to time, without being limited by the maximum rate specified in s109(6) LPA.

### **10.3 Removal and replacement**

The Trustees may:

- (a) subject to obtaining a court order if required by law, remove any Receiver by written notice; and
- (b) replace (by appointment pursuant to Clause 10.1) any Receiver whose appointment has terminated.

### **10.4 Agent of the Chargor**

- (a) Any Receiver appointed under this Security Agreement whether acting solely or jointly shall be deemed to be the agent of the Chargor and to be in the same position as a receiver appointed under the LPA.
- (b) The Chargor shall be solely responsible for the acts, omissions, defaults, losses and misconduct of any Receiver and for his or her remuneration. The Trustees shall not be in any way liable or responsible either to the Chargor or to any other person for any Receiver.



## **11. POWERS OF SECURITY ENFORCEMENT PARTIES**

### **11.1 General**

- (a) A Receiver has:
  - (i) all of the rights set out below in this Clause 11;
  - (ii) all of the rights granted by the LPA to any receiver or mortgagor or mortgagee in possession; and
  - (iii) whether or not it is an administrative receiver, all of the rights granted by the IA to any administrative receiver,in each case as such rights are varied and extended by this Security Agreement.
- (b) The Trustees have after this Security has become enforceable the rights referred to in Clause 11.1(a), whether or not they have appointed a Receiver.
- (c) A Delegate has the rights referred to in Clause 11.1(a) to the extent provided in its, his or her appointment.
- (d) Any reference in this Clause 11 to any Security Assets includes, in the case of a Receiver or Delegate, only those Security Assets over or in respect of which it, he or she has been appointed.
- (e) A Security Enforcement Party may exercise its, his or her rights under this Clause 11 in such manner and on such terms as it, he or she thinks fit.

### **11.2 Disposal of Security Assets**

- (a) The right to enter into, take possession of, give up possession of, get in and collect any Security Asset.
- (b) The right to sell or otherwise dispose of any Security Asset on any terms and for any consideration as the Receiver may think fit. This consideration may include cash, debentures, obligations, shares or other security and may be payable in a lump sum or instalments.
- (c) The right to give a valid receipt for any money and execute any discharge, assurance or other document which may be proper or desirable to realise any Security Asset.

### **11.3 Contracts and proceedings**

- (a) The right to perform, repudiate, terminate, amend or enter into any contract or other document relating to any Security Asset.
- (b) The right to bring, prosecute, defend, enforce and discontinue any action, suit, arbitration or other proceedings relating to any Security Assets.

- (c) The right to pursue, settle, arrange, compromise or submit to arbitration any claim, account, dispute or demand relating to, or to make any VAT election in respect of, any Security Asset.

#### **11.4 Other rights**

- (a) The right to do any other act or thing which the Receiver may consider:
  - (i) desirable or necessary to protect, preserve or realise any Security Asset;  
or
  - (ii) incidental or conducive to any rights conferred on the Security Enforcement Party under or by virtue of this Security Agreement or by law.
- (b) The right to exercise and do in relation to any Security Asset all the rights and things which the Receiver would be capable of exercising or doing if it, he or she were the absolute beneficial owner of that Security Asset.
- (c) The right to use the name of the Chargor to exercise any of the rights referred to in this Clause 11.

### **12. DEALING WITH PROCEEDS**

#### **12.1 Application of proceeds of enforcement, etc**

- (a) Any monies received by the Trustees or any Receiver under this Security Agreement after this Security has become enforceable shall be applied first in settlement of the fees, costs and expenses of the Receiver (if applicable) then in payment to the Scheme for application in or towards discharging the Secured Obligations.
- (b) Notwithstanding Clause 12.1(a), until the Discharge Date the Trustees or any Receiver may:
  - (i) refrain from applying or enforcing any other monies, Security or other rights held or received by them in respect of the Secured Obligations or apply and enforce them in such manner as they see fit and the Chargor shall not be entitled to the benefit of the same; and
  - (ii) hold in an interest-bearing suspense account any monies received from the Chargor or on account of the Secured Obligations.
- (c) Clause 12.1(a) is without prejudice to the right of the Trustees to recover any shortfall from the Chargor.

### **13. GENERAL SECURITY PROVISIONS**

#### **13.1 Continuing security**

This Security is, and shall remain in force as, a continuing security for the Secured Obligations, regardless of any intermediate payment or discharge, unless and until it is released and discharged in writing by the Trustees.

#### **13.2 Additional security**

This Security is in addition to and is not in any way prejudiced by any other guarantee or Security now or subsequently held by or on behalf of the Trustees.

#### **13.3 Immediate recourse**

The Chargor waives any right it may have of first requiring the Trustees to enforce any Security or other right, or claim payment from or proceed against any other person, before claiming from it under this Security Agreement. This waiver applies irrespective of any applicable law and regulation or any provision of the Additional Contributions Agreement to the contrary.

#### **13.4 Redemption of prior Security**

- (a) The Trustees may at any time:
  - (i) redeem, or procure the transfer to themselves of, any prior Security over any Security Assets; or
  - (ii) settle and pass the accounts of the holder of any prior Security. Any accounts so settled and passed shall in the absence of manifest error be conclusive and binding on the Chargor.
- (b) All principal monies, interest, costs, expenses and other amounts incurred in and incidental to any redemption, transfer or settlement under Clause 13.4(a) shall be paid by the Chargor to the Trustees on demand.

### **14. POWER OF ATTORNEY**

The Chargor irrevocably and by way of security appoints each Security Enforcement Party severally to be its attorney, in its name or otherwise, on its behalf and as its act and deed to execute, deliver and perfect any document and do any other act or thing which may be required or which the attorney may consider desirable:

- (a) to carry out any obligation imposed on the Chargor by this Security Agreement; or
- (b) in the exercise of any rights conferred on any Security Enforcement Party by this Security Agreement or by applicable law and regulation.

The Chargor undertakes to ratify and confirm all acts and things done by an attorney in the exercise or purported exercise of this power of attorney.

## 15. RELEASE OF SECURITY

### 15.1 Definitions relating to release of this Security

- (a) In this Security Agreement, "**Discharge Date**" means the date on which the Trustees have secured all of the liabilities of the Scheme in full with relevant insurance policies.
- (b) In this Clause 15:
  - (i) "**avoided**" means avoided, restored or adjusted in whole or part under any law relating to insolvency (and "**avoidance**" shall be construed accordingly); and
  - (ii) "**settlement**" means a release, settlement, discharge, re-assignment or arrangement.

### 15.2 Release of this Security

- (a) Clause 6 (*Negative pledge and disposals*) and Clause 7 (*Accounts*) shall cease to apply on the Discharge Date.
- (b) If the Chargor so requests on or following the Discharge Date, the Trustees shall as soon as reasonably practicable (and at the Chargor's cost) release and discharge this Security.
- (c) Any settlement made by the Trustees on the faith of any assurance, security or payment shall be conditional on that assurance, security or payment not being avoided.
- (d) If any avoidance occurs as referred to in Clause 15.2(c) (including by reason of a concession or compromise referred to in Clause 15.2(e)), then the settlement given by the Trustees shall have no effect and shall not prejudice the right of the Trustees to enforce this Security in respect of the Secured Obligations. As between the Chargor and the Trustees, this Security shall (notwithstanding the settlement) be deemed to have remained at all times in effect and held by the Trustees as security for the Secured Obligations.
- (e) The Trustees may concede or compromise any claim that an assurance, security or payment is liable to avoidance.

## 16. TAXES

- (a) Any tax liability in relation to the Security Assets including tax on interest or capital gains will be borne by the Chargor and will not be payable or deducted from the Security Assets.
- (b) The Trustees will not be required to make any payment in respect of that tax liability to the Chargor, nor will the Chargor be able to set off any liability against any future payments due under this Security Agreement.

- (c) The Chargor shall pay and, within three Business Days of demand, indemnify the Trustees against any Loss that the Trustees incur in relation to all stamp duty, registration and other similar taxes payable in respect of this Security Agreement.

## **17. CHANGES TO THE PARTIES**

### **17.1 Trustees**

- (a) The Chargor acknowledges that:
  - (i) the rights and obligations of the Trustees under this Security Agreement may be transferred in whole or in part to the Pension Protection Fund as a result of the operation of Section 161 of and Schedule 6 to the Pensions Act 2004; and
  - (ii) the rights and obligations under this Security Agreement shall be binding upon and enure for the benefit of any person who is for the time being a trustee of the Scheme including any person who succeeds or replaces a trustee of the Scheme.
- (b) Each Trustee may at any time and from time to time (without consent of or notice to Chargor) assign and/or transfer any or all of its rights and/or obligations under this Security Agreement to any person or persons.

### **17.2 Chargor**

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Security Agreement.

## **18. PROVISIONS OF THE ADDITIONAL CONTRIBUTIONS AGREEMENT**

The following provisions of the Additional Contributions Agreement shall apply to this Security Agreement as if set out in full here and as if references therein to "the Company" were references to the Chargor and references to "this Deed" were to this Security Agreement and with such other changes as are appropriate to fit this context: Clause 9 (*Payments*), Clause 12 (*Enforceability*), Clause 13 (*Severability, remedies and waivers*), Clause 14 (*Counterparts*), Clause 15 (*Notices*) and Clause 16 (*Language*).

## **19. GOVERNING LAW**

This Security Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

## **20. ENFORCEMENT**

### **20.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Security Agreement (including a dispute relating to the existence, validity or termination of this Security Agreement or

any non-contractual obligations arising out of or in connection with this Security Agreement).

- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle any such dispute and accordingly no Party will argue to the contrary.
- (c) Notwithstanding Clause 20.1(a) above, no Security Enforcement Party shall be prevented from taking proceedings relating to any such dispute in any other courts with jurisdiction. To the extent allowed by law, any Security Enforcement Party may take concurrent proceedings in any number of jurisdictions.

**EXECUTION:**

The parties have shown their acceptance of the terms of this Security Agreement by executing it, in the case of the Chargor as a deed, at the end of the Schedules.

**SCHEDULE 1  
FORM OF NOTICE OF CHARGE**

To: *[Name and address of other bank]*

*[Date]*

Dear Sirs

**Notice of Charge**

We refer the following account:

Account Name:	[●]
Account Number:	[●]
IBAN:	[●]
Bank Name:	[●]
Bank Swift:	[●]

(the "**Account**").

We give you notice that by a Security Agreement (the "**Security Agreement**") dated [●] 20[●] and entered into by us in favour of *[Names of Trustees]* (as Trustees, as defined in the Security Agreement) (the "**Trustees**") we have charged all our rights in, to, under, in respect of or derived from any credit balances on the Account (the "**Balances**") and the indebtedness represented by the Account.

We irrevocably and unconditionally instruct and authorise you (despite any previous instructions which we may have given to the contrary):

- (a) to disclose to the Trustees (without any reference to or further authority from us and without any enquiry by you as to the justification for the disclosure), any information relating to the Account which the Trustees may, at any time and from time to time, request;
- (b)
  - (i) prior to the occurrence of an Enforcement Event (as defined in the Security Agreement), at any time and from time to time on receipt by you of any joint written instructions signed by an A Authorised Signatory acting on behalf of the Trustees and a B Authorised Signatory acting on our behalf; or
  - (ii) following the occurrence of an Enforcement Event (as defined in the Security Agreement), on receipt by you of written instructions signed by an A Authorised Signatory acting on behalf of the Trustees (without any reference to or further authority from us and without any enquiry by you as to the justification for the instruction or the validity of the same),

to:

- (A) release any amount of the Balances and to act in accordance with the relevant instruction; and



- (B) comply with the terms of any written notice, statement or instruction in any way relating or purporting to relate to the Account, the Balances or the indebtedness represented by it or them.

The A Authorised Signatories authorised to act on behalf of the Trustees and the B Authorised Signatories authorised to act on our behalf on the date of this notice (and each of their specimen signatures) are as set out below.

<b>A Authorised Signatories – Trustees</b> <b>(Signature above printed name)</b>	<b>B Authorised Signatories – AQA</b> <b>Education</b> <b>(Signature above printed name)</b>

We agree that:

- (i) none of the instructions, authorisations and confirmations in this notice can be revoked or varied in any way except with our and the Trustees' prior written consent; and
- (ii) you are authorised to disclose any information in relation to the Account to the Trustees at the Trustees' request in accordance with this notice.

Please acknowledge receipt of this notice, and confirm your agreement to it, by signing the acknowledgement on the enclosed copy letter and returning it to the Trustees at [●] marked for the attention of [●].

This letter is governed by, and shall be construed in accordance with, English law.

Yours faithfully

.....  
**AQA EDUCATION**  
**By: [Name of signatory]**

## FORM OF ACKNOWLEDGEMENT OF NOTICE OF CHARGE

*[On copy letter only]*

To: *[Trustees]*

We acknowledge receipt of a notice dated [●] 20[●] (the "Notice") addressed to us by AQA Education (the "Chargor") regarding the following account:

Account Name: [●]  
Account Number: [●]  
IBAN: [●]  
Bank Name: [●]  
Bank Swift: [●]

(the "Account").

We confirm that:

- (a) we consent to the charge of the Account and will comply with the terms of that notice;
- (b) there does not exist in our favour, and we undertake not to create, assert, claim or exercise, any mortgage, fixed or floating charge, assignment or other security interest of any kind or any agreement or arrangement having substantially the same economic or financial effect as any of the above (including any rights of counter-claim, rights of set-off or combination of accounts over or with respect to all or any part of the Account and/or the Balances (as defined in that notice));
- (c) we have not, as at the date of this acknowledgement, received any notice that any third party has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of, the rights of the Chargor in, to, under, in respect of or derived from the Account or the Balances;
- (d) we undertake that, on our becoming aware at any time that any person other than the Trustees has or will have any right in, or has made or will be making any claim or demand or taking any action in respect of the Account or the Balances, we will immediately give written notice of that to the Trustees;
- (e) we will not permit any amount to be withdrawn from the Account except in accordance with the Notice; and
- (f) we will not seek (or otherwise permit the Chargor) to modify, vary or amend the terms upon which the sums deposited in the Account without your prior written consent.

.....  
for and on behalf of

*[Name of bank]*

By: *[Name of signatory]*

Dated:

**EXECUTION of the Security Agreement:**

**The Chargor**

SIGNED as a deed by , )  
Director, duly authorised for and on behalf )  
of AQA EDUCATION in the presence of: )

Witness's signature:

Witness's name  
(in capitals):

PETER BALLARD

Witness's address:

**The Trustees**

SIGNED as a deed by **VINCENT BRUCE** )  
**GUTHRIE** in the presence of: )

Witness's signature:

Witness's name  
(in capitals):

Witness's address:

SIGNED as a deed by **MICHAEL DAVID** )  
**HAMPTON** in the presence of: )

Witness's signature:

Witness's name  
(in capitals):

Witness's address:

SIGNED as a deed by **ELIZABETH** )  
**JANE HEAD** in the presence of: )

Witness's signature:

Witness's name  
(in capitals):

Witness's address:

SIGNED as a deed by **ANDREW** )  
**SUTHERLAND MACLAREN** in the )  
presence of:

Witness's signature:

Witness's name  
(in capitals):

Witness's address:

SIGNED as a deed by **ROBERT COX** in )  
the presence of: )

Witness's signature:

Witness's name **SHARON KHAN**  
(in capitals):

Witness's address:

SIGNED as a deed by **Kim Nash** , )  
Director, duly authorised for and on behalf )  
of **PTL GOVERNANCE LTD** in the )  
presence of:

Witness's signature:

Witness's name **SHARON KHAN**  
(in capitals):

Witness's address: