

Annex A – standing instructions

The Scottish Ministers (“Scottish Ministers”) - Standing Instructions To Solicitors For Use In Open Market Shared Equity Transactions

Introduction

Please note that the following commentary gives an overview of how the Open Market Shared Equity (OMSE) scheme is intended to work, for the benefit of solicitors acting for purchasers who are being provided with financial support from Scottish Government via the scheme. The commentary is without prejudice to, and is subject to, the remainder of these Standing Instructions, and the legal documentation referred to herein.

In terms of the OMSE scheme, financial assistance is provided to enable qualifying applicants to buy a property suitable for their needs on the open market.

Applicants can pay over valuation for a property from their own funds, provided they do not pay more than the published threshold amount for that area and size. The amount that the Scottish Ministers will be contributing is divided by the purchase price or valuation, whichever is the lowest, to obtain the Scottish Ministers’ corresponding equity stake percentage, to two decimal places..

Your receipt of these papers means that the applicant for whom you are being asked to act has been successful in his/her application for such assistance.

For the avoidance of doubt, a qualifying applicant (the "Purchaser") currently means:-

- those that are intending to be owner/occupiers (properties cannot be bought for investment purposes);
- those that have satisfied the eligibility conditions as assessed by the administering agent appointed by Scottish Ministers to administer the OMSE scheme (the “Administering Agent”);
- those that are obtaining a first ranking mortgage for the maximum amount which he/she is able to afford on usual terms and is likely to be sustainable by

them (as an exception to this requirement, applicants aged 60 or over do not require to take out a mortgage, if they are able to apply savings or the proceeds from the sale of another property towards the purchase price of the new house);

- the Purchaser is a first-time buyer as defined for the purposes of the OMSE scheme; and
- applicants who do not (or will not at the point of purchase of the OMSE property) possess any interest in any other dwelling.

By way of background, Scottish Government provides the assistance to the Purchaser by paying an agreed percentage of the full purchase price payable for a property which, added to the amount which the Purchaser can afford to borrow (and including any deposit provided by the Purchaser), enables the Purchaser to purchase their preferred property.

The Administering Agent calculates the minimum amount which the Purchaser is expected to contribute towards the purchase of a suitable property and the maximum threshold price of the property which the Purchaser can offer to buy, via a “passport letter”. The financial contribution provided by Scottish Ministers towards the full purchase price or valuation, whichever is the lower, will be expressed as a percentage of the initial purchase price or valuation whichever is the lower, of the property. When the Purchaser sells the property he/she will be obliged to pay to Scottish Ministers the contribution percentage of the eventual sales proceeds.

The OMSE scheme is intended to support first-time buyers, which means that the Purchaser must be a first-time buyer as defined by the scheme, and must not have previously been a home owner, unless they fall within a priority target group such as persons over the age of 60.

Where the Purchaser is aged 60 or over and intends to apply the free proceeds from the sale of another property to the purchase of the new property, you will be expected to confirm and certify the amount or anticipated amount of those free proceeds.

A Purchaser who may have opened up a Help to Buy: ISA in which to save a deposit towards the purchase of their home. While the Help to Buy: ISA scheme covers

Scotland, it is operated by the UK Government and not by Scottish Ministers, and involves the UK Government providing the ISA holder with a bonus at the point when the savings in the ISA are being withdrawn and applied towards the home purchase. You should note that if your client has a Help to Buy: ISA, then (a) only you as the purchaser's solicitor are able to access and uplift the ISA funds, and (b) you must be registered with the UK Government in order to do so. Please also note that Help to Buy ISAs are not available to persons who are already homeowners or who have been previously.

The obligation to make the repayment to the Scottish Ministers has to be secured on the property by a second ranking standard security (the "Postponed Security") which must rank immediately behind the loan of the lender who will be providing a loan for a sum up to the remainder of the total purchase price. A ranking agreement is also required in Scottish Government's preferred form to regulate the ranking of the two standard securities. In the case of applicants who are aged 60 or over and are not taking out a mortgage the standard security in favour of Scottish Ministers will be first ranking.

The Shared Equity Agreement will subsist for an indeterminate period of time but the Standard Security to be granted by the Purchaser in favour of the Scottish Ministers will not be capable of being redeemed by the Purchaser pursuant to section 11 of the Land Tenure Reform (Scotland) Act 1974 (which is often referred to as the "20-year security rule"). The Redemption of Heritable Securities (Excluded Securities) (Scotland) Order 2018 came into effect on 15 February 2019 and removed the right to redeem securities after 20 years for those participating in designated shared equity schemes including the OMSE scheme.

The Scottish Government has appointed an Administering Agent for the purpose of administering the Scottish Government's financial support to Purchasers, including providing Purchaser's solicitors with these instructions and collecting all payments due including partial and full redemption payments. This will mean that the Purchaser has one nominated point of contact for the shared equity documentation, including the Postponed Security, which governs Scottish Government's financial support.

Please note that Scottish Ministers reserve the right, at their discretion, to decide not to instruct a buyer's solicitor to act in accordance with these Standing Instructions. If Scottish Ministers have determined that they are unwilling to issue the Standing Instructions to you or your firm either permanently or for a period of time and you have been notified of this fact, you must not accept these instructions and must refer matters back to the Administering Agent for further action.

Instructions

1. These standing instructions ('instructions') are designed for use when you are asked to act on our behalf in relation to a Standard Security. (In the instructions, any reference to "we", "us" or "our" means the Scottish Ministers). The key features of our approach are:

- in all transactions where you receive an instruction to act for us these instructions (as amended from time to time) will form an integral part of our instructions;
- while these instructions have been divided into a series of separate sections, in some instances it will be necessary for you to cross refer between sections; and
- all matters which require to be reported or delivered to Scottish Ministers are to be reported or delivered to Link Shared Equity at [Link Shared Equity](#)

We will be relying upon you to carry out our instructions in a professional manner. Although our instructions are intended to be comprehensive they are not exhaustive and it is likely that circumstances will arise where we will require to rely on your professional skill and guidance to deal with situations which are not specifically addressed.

This may include for example but without prejudice to the generality of the foregoing, any additional requirement in the UK Finance Lenders Handbook upon which these instructions have been based. If a situation arises where you identify a gap in the instructions, please let us know.

If you or a member of your immediate family (that is to say your spouse, civil partner or co-habitee, or a parent, sibling, child, step-parent, step-child, grandparent,

grandchild, parent-in-law or child-in-law, or a spouse civil partner or co-habitee of any such person) is your client and you are a sole practitioner, you must not act for us.

Your firm must not act for us if the partner or fee earner dealing with the transaction or a member of his immediate family is your client unless we say your firm may act and a separate fee earner of no less standing or a partner within the firm acts for us.

If there is any conflict of interest you must not act for us and must return our instructions.

Unless we otherwise state you must not advise any guarantor or any non-entitled spouse who is to execute a consent to the taking of a standard security, or a renunciation of occupancy rights and you must arrange for them to take independent legal advice. If we do allow you to advise any of these people you must only do so after recommending in the absence of any other person interested in the transaction that such person obtains independent legal advice. Any advice you give any of these people must be given in the absence of any other person interested in the transaction.

Nothing in these instructions lessens your duties to your client.

In addition to these definitions, any reference to any regulation, legislation or legislative provision shall be construed as a reference to that regulation, legislation or legislative provision as amended, re-enacted or extended at the relevant time.

Searches and enquiries

2. Please report to us if the proprietor has owned the property for less than six months, or the person selling to your client is not the proprietor, unless the seller is:

- a personal representative of the proprietor; or
- an institutional heritable creditor exercising its power of sale; or
- a receiver, trustee in sequestration or liquidator; or
- a developer or builder selling a property acquired under a part exchange scheme.

3. In carrying out your investigation, you must make all usual and necessary searches and enquiries, taking into account the locality and other features of the particular property.
4. All requisite searches in the Personal/Land Register, the Register of Charges, Company File, and any other relevant registers, should be carried out. In addition, local authority certificates, Property Enquiry Certificates, Advance Notices, Legal Reports and Plans Reports as appropriate should be obtained. These reports should not be forwarded to us unless we specifically request in writing that you do so.
5. All Property Enquiry Certificates must not be more than three months old at settlement. In case of a Registered Company we also require a Search in the Register of Charges and the Company File continued to a date not less than 22 days after the date of registration to disclose the security in our favour.
6. We accept searches and reports from private firms in the Land Register of Scotland, Register of Inhibitions and Adjudications, Register of Companies and Register of Insolvencies. We accept Property Enquiry Certificates from private firms. You must be satisfied that you will be able to certify that the title is good and marketable. You must take reasonable steps to check that private firms carry adequate indemnity cover.
7. You must address issues arising from any contaminated land entries revealed in the course of you undertaking your investigations. You must ensure that the following questions relating to contaminated land have been addressed. In particular, please list any entries relating to the property in the Register maintained under s. 78R(1) of the Environmental Protection Act 1990.
 - Has the council served or resolved to serve any notice relating to the property under s. 78B(3)?
 - Has the council consulted, or resolved to consult, with the owner or occupier of the property under s. 78G(3) in relation to anything to be done on the property as a result of adjoining or adjacent land being contaminated?
 - Has any entry been made in the Register, or any notice served or resolved to be

served, under s. 78B(3) in relation to any adjoining or adjacent land which has been identified as contaminated because it is in such a condition that harm or pollution of controlled waters might be caused on the property?

Valuation of the property

8. You must take reasonable steps to verify that there are no discrepancies between the description of the property as valued and the title and other documents including e.g. a plans report which a reasonably competent conveyancer should obtain and, if there are, you must tell us immediately.

9. You should take reasonable steps to verify that the assumptions stated by the valuer about the title in the valuation report are correct. If they are not, please let us know as soon as possible as it will be necessary for us to check with the valuer whether the valuation needs to be revised. We are not expecting you to assume the role of valuer. We are simply trying to ensure that the valuer has valued the property based on correct information. Via the Administering Agent, we will require sight before conclusion of missives of either a copy of the property valuation or, if the mortgage provider does not supply a copy of the valuation report, a copy of the mortgage offer (but only provided it expressly confirms the valuation figure). We will require to be satisfied that the valuer owes a duty of care to us and that we can rely on the valuation report. This will normally be done through an over-arching arrangement between Scottish Government and RICS members pursuant to which valuers agree to extend a duty of care to Scottish Ministers in relation to all valuations prepared by them for properties which come within the open market shared equity scheme. If the Purchaser is aged 60 or over and is not taking out a mortgage, a valuation report suitable for mortgage purposes will still require to be instructed and exhibited to us.

Coal mining

10. You must obtain a Coal Authority search, which must not be more than six months old at settlement, where it is reasonable to believe that the property could be affected by underground workings. In the case of a coal mining search, you should follow the current edition of The Law Society of Scotland Guidance Notes. If the

results of the search from the Coal Authority are such that the property is not affected by any of the matters mentioned in the report then we do not need to be notified of its contents. Subject to that, you should advise us if any entries are revealed. You should not simply send us a copy of the mining search.

Planning and building regulations

11. You must by making appropriate searches and enquiries take all reasonable steps (including any further enquiries to clarify any issues which may arise) to ensure that:

- the property has the benefit of any necessary planning and building regulation consents;
- there is no evidence of any breach of the conditions of those consents or any other consent or certificate affecting the property; and
- no matter is revealed which would preclude the property from being used as a residential property or indicate that the property may be the subject of enforcement action.

12. If there is such evidence and the seller is not providing a sufficient undertaking to satisfy those outstanding conditions by settlement, then this must be reported to us. Copies of planning permissions, building warrants and other consents or certificates should not be sent to us.

13. If the property will be subject to any enforceable restrictions, for example under an agreement (such as an agreement under section 75 of the Town and Country Planning (Scotland) Act 1997) or in a planning permission which, at the time of settlement, might reasonably be expected materially to affect its value or its future marketability, you should report this to us.

Good and marketable title

14. The title to the property must be good and marketable, and free of any burdens, restrictions, servitudes, charges or encumbrances which, at the time of settlement, might reasonably be expected to materially adversely affect the value of the property or its future marketability (other than any matters covered by indemnity

insurance and which may be accepted by us). Our requirements in respect of indemnity insurance are set out below. You must ensure that, following settlement, the title to the property will be vested in your client.

15. Where the property comprises a flat, the cost of maintenance of the foundations and roof must be borne by the owners of the building of which the flat forms part in equitable proportions in terms of the title.

Restrictions on use and occupation

16. You must check whether there are any material restrictions on the occupation of the property as a private residence or as specified by us (for example, because of the occupier's employment, age or income), or any material restrictions on its use. If there are any such restrictions, you must report details to us.

Title conditions

17. You must enquire whether the property has been built, altered or is currently used in breach of a title condition. We rely on you to take reasonable steps to check that the condition is not enforceable. If in your professional opinion you believe that there is a risk of enforceability you must ensure (subject to below) that indemnity insurance is in place at settlement.

18. We will not insist on indemnity insurance:

- if you are satisfied that there is no risk to our security;
- the breach has continued for more than 20 years; and
- there is nothing to suggest that any action is being taken or is threatened in respect of the breach.

Inhibitions and insolvency

19. You must obtain a clear personal search against each proprietor, each person selling to your client if other than the proprietor and your client as at a date not more than three days prior to the date of completion of the advance. You must fully

investigate any entries revealed by your personal search against each proprietor or person selling to your client and your client to ensure that they do not relate to them.

20. Where an entry is revealed against the name of the proprietor, the person selling to your client or your client:

- you must be satisfied that in your professional opinion the entry does not relate to the proprietor, the person selling to your client or your client if you are able to do so from your own knowledge or enquiries (for example in the Register of Insolvencies); or
- if, after enquiry, you are unable to certify that the entry does not relate to the proprietor, the person selling to your client or your client you must report this to us even if, in the case of an inhibition, it pre-dates the person selling to your client's acquisition of the property. We may as a consequence need to withdraw our offer.

21. If you are aware that any transfer of the title to the property may be open to challenge as a gratuitous alienation or an unfair preference, then you must be satisfied that we will acquire our interest in good faith and will be protected under the relevant statutory provisions against our security being set aside. You must also obtain clear personal searches against all parties to any such transfer. If in your professional opinion you are not satisfied on any such matter you must arrange indemnity insurance for an amount sufficient to protect our interests under the security.

Powers of attorney

22. If any document is being executed under power of attorney, you must see an extract registered power of attorney, the original or a certified copy, and ensure that it is, on its face, properly drawn up, that it is adequate for the transaction contemplated, that it appears to be properly executed by the granter and that the attorney knows of no reason why such power of attorney will not be subsisting at settlement. In the case of joint clients, neither client may appoint the other as attorney.

Payment and title documents

23.1 The payment ('Payment') by Scottish Ministers to you on behalf of your client will not be made until all relevant matters which need to be satisfied before settlement have been complied with and we have received and are satisfied with your certificate of title set out in Appendix 1 to these standing instructions (which is to be submitted by you to the Administering Agent).

23.2 You will require to explain to your client the terms and legal effect of the shared equity documentation which our solicitors will prepare and send to you for completion and signing by your client and (in the case of the Ranking Agreement) the primary lender. The shared equity documentation comprises a Shared Equity Agreement, a Standard Security in favour of Scottish Ministers and a Ranking Agreement, and is intended to regulate and secure the financial assistance given by Scottish Ministers to your client.

24. You should tell us as soon as possible if you have been told that your client has decided not to proceed with the purchase or to not take up the Payment for any reason. You should advise us as soon as possible after missives have been concluded for the purchase.

Boundaries

25. Wherever possible, these must be clearly defined by reference to a suitable plan or description. They must also accord with the information given in the valuation report. You should ensure that the plan or the description accords with your client's understanding of the extent of the property to be secured to us. You must report to us if there are any discrepancies and, where appropriate, a Plans Report should be obtained and any discrepancies reported to us.

Purchase price

26. The purchase price for the property and the amount of loan being advanced by the primary lender must be the same as set out in the accompanying instruction

letter ('your instructions') from [insert name of Administering Agent]. If it is not, you must tell us. You must tell us if the missives provide for:

- a cashback to the buyer; or
- part of the price is being satisfied by a non-cash incentive to the buyer.

27. This may lead to the Payment not being made or amended.

28. You must report to us if you will not have control over the payment of all of the purchase money (for example if it is proposed that your client pays money to the seller direct) other than a deposit held by an estate agent or a reservation fee of not more than £500 paid to a builder or developer.

29. If your client is using the proceeds of a Help to Buy: ISA towards the purchase price, you must be responsible for applying for the payment (and any bonus payment from the UK Government), which means you will require to be registered for the purposes of that scheme.

Vacant possession

30. Unless otherwise stated in your instructions, it is an essential condition of the Payment being made that vacant possession is obtained. The missives must provide for this. If you doubt that vacant possession will be given, you must not part with the Payment and should report the position to us.

New properties – building standards indemnity schemes

31. If the property is newly built, or newly converted, or to be occupied for the first time, you must ensure that it was built or converted under the following:

- the National House Building Council (NHBC) Buildmark scheme;
- the Zurich Municipal Newbuild scheme;
- the Premier Guarantee for Private Housing and Completed Housing; or
- any other new home warranty or insurance schemes which we have confirmed in writing as being acceptable to us.

If a new home warranty or insurance scheme is acceptable to your client's primary

lender in terms of the UK Finance Handbook, then that scheme will normally be acceptable to us.

If the property will not have the backing of a new home warranty or insurance scheme but the seller has indicated that a professional consultant's certificate will be provided as an alternative, we may be willing to accept such a certificate, but only if it is acceptable to the primary lender and we are satisfied with the details of the proposed certificate including the period of time it will subsist for and the professional indemnity insurance of the consultant, and that Scottish Ministers as the second-ranking secured creditor will be given the benefit of the certificate and will be able to place reliance upon it.

32. You must obtain by settlement a copy of a new home warranty provider's cover note from the developer. The cover note must confirm that the warranty provider has carried out a final/pre-handover inspection and that the new home warranty will be provided. The warranty documentation should not be sent to us after settlement. You do not need to see the cover note before submitting to us the certificate referred to in paragraph 52 below, provided that you do obtain it prior to settlement.

Roads and sewers

33. If the roads serving the property are not adopted or maintained at public expense, but it is intended that they should be so, there must be a road bond in existence where required by statutory regulation, or you must make an appropriate retention from the purchase price, or you must report to us.

34. The property must be served by a public sewer or by private sewerage arrangements which have the necessary approvals from the sewerage authority or you must report to us.

Servitudes

35. You must take all reasonable steps to check that the property has the benefit of all servitudes necessary for its full use and enjoyment. This would include, for example, rights of way (both vehicular and pedestrian), the use of services and any

necessary rights of entry for repair. All such rights must be enforceable by your client and your client's successors in title. If they are not, you must report to us.

36. If your client owns adjoining land over which your client requires access to the property or in respect of which services are provided to the property, the land over which such access is to be taken or over or through which such services are to be provided must also be included in our security.

Rights of pre-emption and restrictions on resale

37. You must ensure that there are no rights of pre-emption, restrictions on resale, options or similar arrangements in existence at settlement which will affect our security. If there are, please report this to us.

Improvement and repair grants

38. Where the property is subject to an improvement or repair grant which will not be discharged or waived on settlement, you do not require to report the matter to us unless you are aware of a breach of the conditions of grant or if the purchase and occupation of the property by your client would give rise to such a breach.

Insurance

39. You must:

- report to us if the property is not insured in accordance with our requirements as set out in the standard security;
- ensure that the insurance cover starts from no later than the date of settlement;

Prior securities

40. Confirmation must be obtained from the prior security holders that they have no objection to the standard security being granted in our favour before proceeding with the constitution of our security. At the same time confirmation of the total amount to be secured by the prior security must be obtained and the prior security holders should be asked for confirmation that they are not obliged to make any further advances under the contract to which their security relates.

41. If the amount secured by the prior security differs materially from the figure quoted in our instruction letter we must be advised immediately as this may affect our decision to proceed further.

42. If it is found that there are existing securities affecting the subjects or any other encumbrances to which reference has not been made in our instruction letter, we should be advised immediately.

Other occupiers

43. You must ensure that there are no occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended or the Civil Partnership Act 2004 or any similar such legislation which will have priority over our security. Any deed required for this purpose must be executed prior to settlement.

44. You must ensure that no liferent has been created which could result in our not obtaining vacant possession in the event of enforcing our security against your client.

Indemnity insurance

45. If you identify that the taking out of an indemnity insurance policy is a course required to ensure that the property has a good and marketable title at settlement, you must first tell us and only if we agree should you then take steps to take out suitable insurance. For the avoidance of doubt, this paragraph does not relate to mortgage indemnity insurance. Where indemnity insurance is effected, you must approve the terms of the policy on our behalf:

- the limit of indemnity must meet our requirements;
- the policy must be effected without cost to us;
- you must disclose to the insurer all relevant information which you have obtained;
- you must make sure that the policy does not contain conditions which you know would make it void or prejudice our interests;
- you must provide a copy of the policy to your client and explain to your client why the policy was effected and that a further policy may be required if there is further lending against the security of the property;

- you must explain to your client that your client will need to comply with any conditions of the policy and that your client should notify us of any notice or potential claim in respect of the policy; and
- the policy should always be for our benefit and that of the primary lender and, if possible, for the benefit of your client and any subsequent proprietor or heritable creditor. If your client will not be covered by the policy, you should advise your client of this.

Safeguards

46. You must ensure that you comply with all legislation, regulations and guidance from the Law Society of Scotland in connection with money laundering (“money laundering checks”) including without prejudice, the Proceeds of Crime Act 2002 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. For the avoidance of doubt Scottish Ministers are relying on such compliance in terms of Section 39 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

47. If you are not familiar with the seller’s solicitors you must verify that they appear in a legal directory or that they are currently on record with the Law Society of Scotland or other supervisory body as practicing at the address shown on their notepaper.

Reporting back to us

48. Although legal advisers have been instructed to act in respect of our interest in the preparation of the Shared Equity Agreement, Ranking Agreement and provision of the template Standard Security, we are placing full reliance upon you to act for us in a proper and professional manner in accordance with these instructions. This is in order to avoid unnecessary costs arising from duplication of work.

49. Where you are required to report matters to us in terms of these instructions you should at first instance address your correspondence to [insert Administering Agent point of contact details] or such other person as we may notify to you in writing

making reference to the subject heading under which the matter to be reported upon falls and setting out clearly why it is necessary to report back to us under the instructions. You should also confirm whether you have reported the matter in similar terms to the primary lender. Whilst we may, on occasion, decide to discuss the matter with the legal advisers acting in other aspects of the transaction all correspondence on matters which you are required under these instructions to report to us should be drafted on the basis that we will not do so and that we will rely purely on your firm's advice and recommendation.

50 The main documentation which requires to be completed by you and submitted to us, via the Administering Agent, comprises your certificate of title, which is discussed in detail below. You should also note, however, to notify the Administering Agent as soon as practicable upon missives being concluded for the purchase of the Property. Please also note that, where your client is aged 60 or over and intends to apply the proceeds of sale of an existing property towards the purchase price for the new property, you will be required to confirm the amount of the free proceeds from the sale of that property. You should notify the Administering Agent of the date of conclusion of missives and the anticipated date of entry. Please notify the Administering Agent if you become aware of a delay in the anticipated date of entry.

The documentation

51. You should accurately complete the title description in the Standard Security and Ranking Agreement (if applicable) forwarded to you by our solicitors. You must also ensure the Standard Security is properly executed prior to settlement and that the names and designations of your client are identical to what is shown in the money laundering checks.

Payment and certificate

52. When you are ready to settle, you should forward to us a certificate of title ('Certificate') in the form set out in Appendix 1 to these Standing Instructions. Upon our being satisfied with the terms of the Certificate we will arrange for the Payment to be released directly to you by BACS transfer. You should be aware that this may still

take 3 days to be identified in your records and you should take that into account when planning for Completion.

53. Please note that if any disclosures are to be made these must be of matters which have been promptly notified to and accepted on our behalf in terms of the Instructions. You should also confirm that they have been notified to and fully accepted by the primary lender.

54. You are only authorised to release the Payment when you hold sufficient funds to complete the purchase of the property and pay all tax on the transaction (including land and buildings transaction tax) and registration fees to perfect the security forthwith (including the registration of the Ranking Agreement) as well as make payment to our solicitors in respect of the cost of registration of the Shared Equity Agreement in the Books of Council and Session and obtaining one extract or, if you do not have them, you accept responsibility to pay them yourself. You must hold the Payment on trust for us until settlement. If settlement is delayed, you must return it to us when and how we tell you.

55. You should note that although the Certificate will be addressed to us, we may at some time transfer our interest in the security. In those circumstances, our successors in title to the security and persons deriving title under or through the security will also rely on your Certificate.

56. If, after you have requested the Payment, settlement is delayed you must telephone, or e-mail us immediately after you are aware of the delay and you must inform us of the new date for settlement.

57. You can hold the Payment for five working days before returning it to us. If settlement is delayed for longer than that period, you must return the Payment to us. By applying the Payment towards settlement you shall be deemed to have confirmed that the terms of the Certificate continue to apply as at settlement.

58. If the Payment is not returned within the five working day period, we will assume that settlement has been completed. You must advise the Administering

Agent and Scottish Government's solicitors of the fact that the transaction has settled within five working days of settlement having been effected.

After settlement

59. You must forthwith after settlement register our standard security and the Ranking Agreement in the Land Register within the period covered by an appropriate Advance Notice. Before making your application for registration, you must place on your file certified copies of the Land Certificate (if any) or copy title sheet, the disposition or other conveyance in favour of your client, our standard security and any discharge from a previous heritable creditor. Following registration, you must check the copy title sheet for accuracy, and ensure there is no exclusion of indemnity or warranty or other adverse entry.

60. Copies of all title deeds, searches, enquiries, consents, requisitions and documents relating to the property must be held to our order and you must not create or exercise any lien over them.

61. You must only send us documents we tell you to.

Your transaction file

62. For evidential purposes you must keep your file in respect of this transaction for at least six years from the date of the Payment before destroying it. Microfiching or data imaging is suitable compliance with this requirement. It is the practice of some fraudsters to demand the conveyancing file on completion in order to destroy evidence that may later be used against them. It is important to retain these documents to protect our interests.

63. You will duly observe your obligations under the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679, which arise in connection with this transaction and will provide us with any personal data relating to this transaction as we may reasonably require. You undertake to us that you will ensure that at all times each relevant individual has been provided with sufficient information

(in an appropriate form) so as to enable fair, transparent and lawful processing of the personal data shared with us in accordance with the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679.

64. Subject to any right of lien or any overriding duty of confidentiality, you should treat documents comprising your file as if they are owned by us and you should not part with them without our consent. You should on request supply certified copies of documents on the file or a certified copy of the microfiche to us.

Payment of fees

65. You must not allow non-payment of fees or outlays to delay the completion and submission of a Land and Buildings Transaction Tax return (with payment of the tax if applicable) and registration of all documents including the Ranking Agreement. We will be responsible for registration of the Shared Equity Agreement but you must place solicitors acting on our behalf in funds at settlement in order to enable registration to take place and one extract to be obtained. The extract will be forwarded to you after registration for retention by your client.

Transmission of funds

66. Where appropriate we will provide you, at the outset of a transaction, with details of a contact name with whom you should liaise in order to obtain funds in time for settlement of the transaction.

67. Please note that the Payment we send you must only be used for the purchase of the property. Therefore you should not release the Payment unless you are sure that it will be used solely for that purpose.

68. Furthermore the Standard Security should be registered in the Land Register as soon as possible after settlement.

Sales log form

69. The sales log form is in two parts. The first part (Part A) relates to details of the property that has been bought and is completed by the Administering Agent.

The second part (Part B) gives details about the household which has bought the property and is completed by one of the named purchasers. The Administering Agent will provide a web link to the Sales Log Form to you, and you should ensure that Part B of the form is completed by your client.

Disclosure of incentives

70. In the event that the property is a new build (or is yet to be occupied for the first time in its current form, for example, because of a renovation or conversion) you will provide us with a copy of the duly signed Disclosure of Incentives form required by the primary lender and any changes to it and confirm that a copy of the said form (and any such changes) has been provided to the valuer.

- Appendix 1 – Form of certificate of title

Form of certificate of title

To The Scottish Ministers

c/o [insert name and address of Administering Agent]

Dear Sirs

Name of Purchaser (the “Purchaser”)

Name of Property (the ‘Property’):

Proposed date of settlement:

£() (the ‘Payment’)

We refer to instruction letter by [insert name of Administering Agent] dated [insert date] on your behalf together with your instructions, (both referred to as the ‘Instructions’).

We confirm that we have fully complied with its terms. Without prejudice to your rights in respect of the foregoing we also confirm that the title may be safely accepted by you as security and is good and marketable.

[We confirm that all or part of the Purchaser’s contribution is made up of the free proceeds from the sale of an existing property at [Insert address of existing property]. Where we were instructed in the sale of that property or are instructed in its sale, we confirm that the free proceeds (after repayment of any existing secured loan) were, or are expected to be [£[]]. Where we were not, or are not, instructed by the Purchaser in the sale of that property, the Purchaser has confirmed to us for the purposes of this Certificate that the free proceeds (after repayment of any existing secured loan) were, or are expected to be [£[]].] [Note – delete if the Purchaser is not aged 60 or over, or is otherwise not applicable]]

We have received written confirmation from the Purchaser (and from each Purchaser where there is more than one person) that [the Purchaser is a first-time buyer as

defined for the purposes of the OMSE scheme and that they have no interest in any other dwelling] OR [that the Purchaser has an interest in a dwelling but that it intends to sell or complete the sale of any dwelling(s) that they have an interest in, on or before the date of completion of the purchase of the Property. The Purchaser has confirmed that it anticipates that conclusion of the sale of such dwelling shall take place on or before the anticipated completion date of the purchase of the Property. We further confirm that we have received no notice or indication that contradicts such written confirmation(s) from the Purchaser.

We hereby request the Payment in time for settlement and confirm that we will (a) deal with the same (b) attend to settlement and all post settlement matters including without prejudice registration and preservation of all documents, titles records and others in accordance with the Instructions. Our client account details for the purposes of the administering agent transferring funds to us are as follows:

[Solicitor to insert details of client account]

Yours faithfully

AGREEMENT

between

THE SCOTTISH MINISTERS

and

[Shared Equity Owner]

NO GOLDEN SHARE

Clauses	Description
1.	<u>Definitions</u>
2.	<u>Obligation to pay</u>
3.	<u>Tranching up</u>
4.	<u>Expenses</u>
5.	<u>Certificates and determinations</u>
6.	<u>Interest and losses</u>
7.	<u>Transfer</u>
8.	<u>Notices</u>
9.	<u>Separate provisions</u>
10.	<u>Governing law</u>
11.	<u>Consent to registration</u>

MINUTE OF AGREEMENT

between

THE SCOTTISH MINISTERS (“Scottish Ministers”) ON THE ONE PART

and

residing at # (hereinafter referred to as the “Shared Equity Owner”) ON THE OTHER PART

WHEREAS Scottish Ministers have agreed to provide the sum of # (£#) (being [#] per cent of the current value of the Property as agreed between the Parties) on condition that the Shared Equity Owner enters into this Agreement with Scottish Ministers and grants a standard security over the Property for the Shared Equity Owner’s obligations hereunder; NOW THEREFORE the Parties have agreed and do hereby agree as follows:

1. Definitions

1.1 In this Minute of Agreement where the context so admits:

1.1.1 the following words and phrases shall have the following meanings:

“Actual Open Market Value” means the highest sum offered by a third party in an Open Market Sale;

“Administering Agent” means any organisation appointed by Scottish Ministers from

time to time to assist in the administering of the Open Market Shared Equity Scheme;

“Agreement” means this agreement;

“Date of Entry” means [here insert the date of entry under the contract for sale];

“Deemed Open Market Value” means the open market value of the Property as determined by the Valuer making the Open Market Value Assumptions and having regard to such other matters as he may in his professional judgement deem appropriate;

“Encumbrance” means a standard security; any inhibition, adjudication or other matter which may competently be registered in the personal registers; or any other encumbrance which may affect the Property including without prejudice any order relating to property transfer or confiscation;

“Home Report” means the documents referred to in the Housing (Scotland) Act 2006 (Prescribed Documents) Regulations 2008 being survey report, information on energy efficiency and property questionnaire in the form set out in the schedules to those regulations;

“New Proportion” has the meaning ascribed to it in clause 3;

“New Security” means any standard security over the Property or any part thereof other than (1) the Standard Security and (2) any standard security specifically referred to in the Ranking Agreement;

“Open Market Conditions” means the following conditions: (i) the Shared Equity Owner has taken all reasonable steps to ensure that the price at which the Property is to be sold is the best that can be reasonably obtained which will include, without prejudice, Scottish Ministers being satisfied with the nature and level of advertising, the Home Report, the marketing of the Property and the terms of sale and (ii) the sum offered by the third party has not been adversely affected by any of the Open Market Value Assumptions not being the case in fact;

“Open Market Sale” means a sale of the whole of the Property on the open market to a third party in circumstances where Scottish Ministers, acting reasonably, are and remain satisfied that the Open Market Conditions have been met;

“Open Market Shared Equity Scheme” means the Scottish Ministers’ affordable home ownership scheme of the same name as described in the Open Market Shared Equity scheme guidance issued by Scottish Ministers from time to time;

“Open Market Value Assumptions” means the following assumptions:

1. that the Property is being sold by a willing seller to a willing purchaser in the open market on an arm’s length basis;
2. that vacant possession of the Property is available;
3. that the Shared Equity Owner has duly complied with, performed and discharged all of the obligations incumbent upon him in terms of this Agreement;
4. that the Shared Equity Owner has complied with the obligations incumbent upon him in terms of the Standard Security;
5. that there is no Encumbrance affecting the Property;
6. that any increase in value arising from any additions or improvements carried out to the Property is to be reflected in the open market value; and
7. that any diminution in value arising from adaptations which have been carried out to meet the needs of a disabled person is to be disregarded from the open market value;

“Parties” means the parties to this Agreement;

“Payment Event” means any one or more of the following events:

- a) an Open Market Sale other than to a Spouse;
- b) any transfer or transmission of the Property or part of the Property whether by sale or gift or succession or in any other way to a third party other than a Spouse which is not an Open Market Sale;
- c) the failure on the part of a Spouse to assume the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers within six months of the transfer or transmission of the Property or part of the Property to the Spouse whether by sale or gift or succession or in any other way;
- d) (If the Shared Equity Owner is one individual and dies without a surviving Spouse or the Property does not pass to any such surviving Spouse as aftermentioned) the death of the Shared Equity Owner;
- e) (If the Shared Equity Owner comprises more than one person) the death of the survivor of such persons;

- f) The Shared Equity Owner or any Spouse of the Shared Equity Owner ceasing to use the Property as his only place of residence or renting the Property or allowing it to be occupied by a third party without the prior written consent of Scottish Ministers;
- g) The Shared Equity Owner or any Spouse of the Shared Equity Owner granting a New Security without first obtaining the written consent of Scottish Ministers;
- h) Any security holders calling up their security or the security holders or any other party exercising any other process of law which would affect the Property;
- i) Any default under the Standard Security;
- j) It is established to the reasonable satisfaction of Scottish Ministers that the Shared Equity Owner has provided or permitted the provision of false or misleading information to Scottish Ministers or the Administering Agent in connection with the granting or transmission of this Agreement; or
- k) the Shared Equity Owner becomes the proprietor of another dwelling house in addition to the Property

“Property” means the whole of the property at [FULL POSTAL ADDRESS INCLUDING POSTCODE MUST BE INSERTED HERE];

“Ranking Agreement” means the agreement regulating the ranking of standard securities between Scottish Ministers, the Shared Equity Owner and [TO BE INSERTED BY PURCHASER’S SOLICITOR];

“Scottish Ministers’ Proportion” either [# %] or, if the terms of clause 3 have been implemented in full (including without prejudice all sums due to Scottish Ministers thereunder having been paid), the New Proportion;

“Spouse” means (a) in the case of a marriage between persons of different sexes, a person who is the husband or the wife of the Shared Equity Owner; or (b) in the case of a marriage between persons of the same sex one of whom is the Shared Equity Owner, the other party to that marriage, or (c) the civil partner of the Shared Equity Owner in terms of the Civil Partnership Act 2004 or (d) a person who lives with the Shared Equity Owner as the husband or the wife;

“Standard Security” means the standard security by the Shared Equity Owner in favour of Scottish Ministers for the Shared Equity Owner’s obligations in terms of this Agreement; and

“Valuer” means the District Valuer of HM Revenue and Customs for the district in which the Property is situated or if otherwise agreed between the Parties such other professionally qualified valuer as Scottish Ministers and the Shared Equity Owner may agree;

and derivative expressions of any defined term shall be construed accordingly.

1.2 References to:

1.2.1 statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force;

1.2.2 “including” shall not be construed as limiting the generality of the words preceding it;

1.2.3 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

1.2.4 this Agreement and to any provisions of it or to any other document referred to in this Agreement shall be construed as references to it in force for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;

1.2.5 any person are to be construed to include references to a corporation, firm, owner, partnership, joint venture, unincorporated body of persons, individual or any state or agency of a state, whether or not a separate legal entity;

1.2.6 any person are to be construed to include that person’s assignees or transferees or successors in title, whether direct or indirect;

1.2.7 a clause means a clause of this Agreement;

1.2.8 clause headings are for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.9 Scottish Ministers includes the Administering Agent or other persons authorised to act on behalf of Scottish Ministers; and

1.2.10 the consent of Scottish Ministers shall be a reference to their prior written consent.

1.3 For the avoidance of doubt, this Agreement supersedes any previous agreement, whether written or oral, expressed or implied, between the Parties to it (or any of them) in relation to the subject matter of this Agreement.

1.4 Obligations undertaken by more than one person shall be undertaken by each jointly and severally.

1.5 Unless otherwise stated any consent, approval or other determination of Scottish Ministers whether in this Agreement, the Standard Security or the Ranking Agreement shall not be unreasonably withheld or delayed nor given subject to unreasonable conditions.

2. Obligation to Pay

Subject always to the terms of clause 2.7:

2.1 If the Shared Equity Owner proposes to transfer their interest in the Property the Shared Equity Owner shall (1) notify Scottish Ministers as soon as reasonably possible; (2) provide them with such information about the proposed sale as Scottish Ministers may reasonably require; and (3) use all reasonable endeavours to ensure that the Open Market Conditions apply including without prejudice ensuring that all duties of care under the relevant Home Report are extended to Scottish Ministers on terms which Scottish Ministers consider to be satisfactory.

2.2 If the proposed transfer is an Open Market Sale the Shared Equity Owner shall pay to Scottish Ministers, Scottish Ministers' Proportion of the Actual Open Market Value on or before the date of settlement of the Open Market Sale.

2.3 If the proposed transfer is not an Open Market Sale it shall only take place with the consent of Scottish Ministers which consent shall not be unreasonably withheld or delayed but if granted shall be given subject to such conditions as Scottish Ministers may reasonably require in order to ensure that they receive payment of Scottish Ministers' Proportion of the Deemed Open Market Value.

2.4.1 Subject to the terms of clause 2.4.2, upon the occurrence of a Payment Event other than in the circumstances set out in clauses 2.1 – 2.3 inclusive Scottish Ministers shall be entitled to instruct the Valuer in terms of this Agreement to determine the Deemed Open Market Value as at a date (“Valuation Date”) which is either on, or within a reasonable period of, the date when that Payment Event occurred.

2.4.2 If the Payment Event is a default which is capable of remedy Scottish Ministers shall not take any action under clause 2.4.1 or clause 6.1 unless (a) they have previously delivered to the Shared Equity Owner a notice which specifies in reasonable detail the nature of the default and a period (“Remediation Period”) which shall be not less than 28 days in which to remedy the same and (b) the Remediation Period has elapsed and the default has not been remedied to the reasonable satisfaction of Scottish Ministers.

2.5 Once the Deemed Open Market Value has been determined in accordance with this Agreement Scottish Ministers shall be entitled at any time thereafter to serve notice (“Payment Notice”) upon the Shared Equity Owner requiring him to make payment of Scottish Ministers’ Proportion of the Deemed Open Market Value.

2.6 In the event that a Payment Notice is served the Shared Equity Owner shall within seven days of receipt of the Payment Notice make payment to Scottish Ministers of Scottish Ministers’ Proportion of the Deemed Open Market Value.

2.7 For the avoidance of doubt the terms of clause 2 shall not apply in relation to any transfer or transmission to a Spouse who assumes the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers within six months of such transfer or transmission all as set out in sub paragraph (c) of the definition of ‘Payment Event’.

3. Tranching Up

3.1 At any time after the Date of Entry the Shared Equity Owner will be entitled to reduce Scottish Ministers’ Proportion in terms of this clause 3 provided always that:

3.1.1 The Shared Equity Owner shall only be entitled to exercise his right to reduce

Scottish Ministers' Proportion in terms of this clause 3.1 if he shall have complied with, performed and discharged all of the obligations incumbent upon him in terms of this Agreement and the Standard Security;

3.1.2 Scottish Ministers' Proportion expressed as a percentage of the Property after the Shared Equity Owner's exercise of this right shall be a minimum of 5% lower than it was prior to the Shared Equity Owner's exercise of that right (for example if Scottish Ministers Proportion before exercise is 30% Scottish Ministers' Proportion after exercise must be 25% or less) and

3.1.3 For the avoidance of doubt Scottish Ministers Proportion cannot be reduced so as to be above zero but less than 5%. For example if Scottish Ministers' Proportion is 10% it may only be reduced to 5% or zero and if it is 9% it can only be reduced to zero.

3.2 The Shared Equity Owner shall serve on Scottish Ministers a notice ("Reduction Notice") in writing specifying the amount expressed as a percentage ("New Proportion") to which Scottish Ministers' Proportion is to be reduced and requiring Scottish Ministers to instruct the Valuer to determine the Deemed Open Market Value as at the date of service of the Reduction Notice and Scottish Ministers shall notify the Shared Equity Owner of the amount thereof in writing within seven days of the said determination by the Valuer.

3.3 Provided payment by the Shared Equity Owner of the amount necessary to reduce Scottish Ministers' Proportion in terms of clause 3.1 is effected within three months of such notification by Scottish Ministers, the Shared Equity Owner may reduce Scottish Ministers' Proportion to the New Proportion. The amount due to Scottish Ministers by the Shared Equity Owner in terms of this clause 3.3 shall be calculated in accordance with the following formula:

$A \times B$

where:

A = the difference between Scottish Ministers' Proportion at the date of

the Reduction Notice and the New Proportion; and

B = the Deemed Open Market Value.

As an example if the Deemed Open Market Value of the Property at the date of the Reduction Notice was £120,000; Scottish Ministers' Proportion at the Date of the Reduction Notice was 30% and the New Proportion was 20%; the amount due to Scottish Ministers would be £12,000 being 10% (i.e. 30% - 20%) x £120,000.

3.4 The reasonable costs of any such determination by the Valuer shall be paid on demand by the Shared Equity Owner to Scottish Ministers.

3.5 The Valuer shall be deemed to be acting as an expert and not as an arbiter and his decision as to the Deemed Open Market Value shall be final and binding on the Parties.

3.6 Upon payment by the Shared Equity Owner the Shared Equity Owner and Scottish Ministers shall forthwith execute a memorandum detailing the New Proportion.

4. Expenses

4.1 The Shared Equity Owner shall be liable for (a) all expenses incurred in connection with the registration of the Standard Security and the Ranking Agreement in the Land Register, (b) the costs of registering this Agreement in the Books of Council and Session and of obtaining one extract and (c) any other reasonable expenses properly incurred by Scottish Ministers in connection with the preparation and completion of this Agreement, the Standard Security and the Ranking Agreement other than the professional charges of their legal advisers.

4.2 The Shared Equity Owner shall pay on demand to Scottish Ministers on a full indemnity basis all reasonable costs and expenses (including but not limited to legal, valuation, registration and out-of-pocket expenses) properly incurred by Scottish Ministers in connection with any actual, proposed or attempted amendment, exercise, enforcement, discharge, extension, variation, waiver or preservation of any

rights under this Agreement and/ or the Standard Security and/ or the Ranking Agreement.

5. Certificates and Determinations

5.1 A certificate signed by any duly authorised officer or employee of Scottish Ministers shall be prima facie evidence of any sums due to Scottish Ministers under this Agreement.

6. Interest and Losses

6.1 If the Shared Equity Owner fails to pay any amount payable by him under this Agreement, Scottish Ministers may charge the Shared Equity Owner interest on the overdue amount. The Shared Equity Owner shall pay the interest immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 2% per annum above the base lending rate (or the equivalent) of the Royal Bank of Scotland plc prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest thereon, or in the event of that ceasing to exist, such other rate equivalent to it as Scottish Ministers may specify. Such interest shall accrue on a daily basis and be compounded quarterly.

6.2 The Shared Equity Owner shall indemnify and keep indemnified Scottish Ministers against all losses, liabilities, costs and expenses including without prejudice any depletion of value of the Property reasonably incurred by Scottish Ministers as a result of any breach by the Shared Equity Owner of any terms of this Agreement, the Standard Security and/ or the Ranking Agreement.

7. Transfer

7.1 The Shared Equity Owner shall not at any time assign, transfer or novate any of its rights and/or obligations under this Agreement save to a Spouse who has entered into an agreement to assume the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers.

7.2 Scottish Ministers may at any time assign, transfer or novate any of its rights and/ or obligations under this Agreement to any person.

7.3 Scottish Ministers may disclose to any person with whom it is proposing to enter, or has entered into, any kind of transfer, participation or other agreement in relation to this Agreement:

- a copy of this Agreement; and
- any information which Scottish Ministers have acquired in connection with this Agreement.

8. Notices

8.1 Any notice to Scottish Ministers shall be addressed to:

The Scottish Ministers c/o [insert details of Administering Agent or subsidiary including contact person] or to the Scottish Ministers at such other address as Scottish Ministers may notify to the Shared Equity Owner in accordance with this Agreement.

8.2 Any notice to the Shared Equity Owner shall be addressed to the Shared Equity Owner at the Property.

9. Separate Provisions

If any provision of this Agreement is or becomes invalid, illegal or unenforceable that shall not affect the validity, legality or enforceability of any other provision.

10. Governing Law

This Agreement shall be governed by and construed according to Scots law and each of the parties submits to the exclusive jurisdiction of the Scottish courts.

11. Consent to Registration

The Parties consent to the registration hereof and of any such Certificate for preservation and execution: IN WITNESS WHEREOF this Agreement consisting of this and the [] preceding pages is executed as follows:

SUBSCRIBED by the Shared Equity Owner at

on the day of (Year-figure)

..... (Signature)

..... (Signature)

in the presence of:

..... Witness (Signature)

..... Full Name

..... Address

.....

SUBSCRIBED for and on behalf of Scottish Ministers by

on the day of (Year-figure)

..... (Signature) Authorised signatory

..... Full Name

in the presence of:

..... Witness (Signature)

..... Full Name

..... Address

.....

AGREEMENT

between

THE SCOTTISH MINISTERS

And

[Shared Equity Owner]

GOLDEN SHARE

Clauses

1. Definitions
2. Obligation to pay
3. Tranching up
4. Expenses
5. Scottish minister's right of pre-emption
6. Certificates and determinations
7. Interest and losses
8. Transfer
9. Notices
10. Separate provisions
11. Governing law
12. Consent to registration

MINUTE OF AGREEMENT

between

THE SCOTTISH MINISTERS (“Scottish Ministers”) ON THE ONE PART

and

residing at # (hereinafter referred to as the “Shared Equity Owner”) ON THE OTHER PART

WHEREAS Scottish Ministers have agreed to provide the sum of # (£#) (being [#] per cent of the current value of the Property as agreed between the Parties) on condition that the Shared Equity Owner enters into this Agreement with Scottish Ministers and grants a standard security over the Property for the Shared Equity Owner’s obligations hereunder; NOW THEREFORE the Parties have agreed and do hereby agree as follows:

1. Definitions

1.1 In this Minute of Agreement where the context so admits:

1.1.1 the following words and phrases shall have the following meanings:

“Actual Open Market Value” means the highest sum offered by a third party in an Open Market Sale;

“Administering Agent” means any organisation appointed by Scottish Ministers from time to time to assist in the administering of the Open Market Shared Equity Scheme;

“Agreement” means this agreement;

“Date of Entry” means [here insert the date of entry under the contract for sale];

“Deemed Open Market Value” means the open market value of the Property as determined by the Valuer making the Open Market Value Assumptions and

having regard to such other matters as he may in his professional judgement deem appropriate;

“Encumbrance” means a standard security; any inhibition, adjudication or other matter which may competently be registered in the personal registers; or any other encumbrance which may affect the Property including without prejudice any order relating to property transfer or confiscation;

“Home Report” means the documents referred to in the Housing (Scotland) Act 2006 (Prescribed Documents) Regulations 2008 being survey report, information on energy efficiency and property questionnaire in the form set out in the schedules to those regulations;

“New Proportion” has the meaning ascribed to it in clause 3;

“New Security” means any standard security over the Property or any part thereof other than (1) the Standard Security and (2) any standard security specifically referred to in the Ranking Agreement;

“Open Market Conditions” means the following conditions: (i) the Shared Equity Owner has taken all reasonable steps to ensure that the price at which the Property is to be sold is the best that can be reasonably obtained which will include, without prejudice, Scottish Ministers being satisfied with the nature and level of advertising, the Home Report, the marketing of the Property and the terms of sale; and (ii) the sum offered by the third party has not been adversely affected by any of the Open Market Value Assumptions not being the case in fact;

“Open Market Shared Equity Scheme” means the Scottish Ministers’ affordable home ownership scheme of the same name as described in the Open Market Shared Equity scheme guidance issued by Scottish Ministers from time to time;

“Open Market Sale” means a sale of the whole of the Property on the open market to a third party in circumstances where Scottish Ministers, acting reasonably, are and remain satisfied that the Open Market Conditions have

been met;

“Open Market Value Assumptions” means the following assumptions:

- 1 that the Property is being sold by a willing seller to a willing purchaser in the open market on an arm’s length basis;
- 2 that vacant possession of the Property is available;
- 3 that the Shared Equity Owner has duly complied with, performed and discharged all of the obligations incumbent upon him in terms of this Agreement;
- 4 that the Shared Equity Owner has complied with the obligations incumbent upon him in terms of the Standard Security;
- 5 that there is no Encumbrance affecting the Property;
- 6 that any increase in value arising from any additions or improvements carried out to the Property is to be reflected in the open market value
- 7 that any diminution in value arising from adaptations which have been carried out to meet the needs of a disabled person is to be disregarded from the open market value;

“Parties” means the parties to this Agreement;

“Payment Event” means any one or more of the following events:

- (a) an Open Market Sale other than to a Spouse;
- (b) any transfer or transmission of the Property or part of the Property whether by sale or gift or succession or in any other way to a third party other than a Spouse which is not an Open Market Sale;
- (c) the failure on the part of a Spouse to assume the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers within six months of the transfer or transmission of the Property or part of the Property to the

Spouse whether by sale or gift or succession or in any other way;

(d) (If the Shared Equity Owner is one individual and dies without a surviving Spouse or the Property does not pass to any such surviving Spouse as aftermentioned) the death of the Shared Equity Owner;

(e) (If the Shared Equity Owner comprises more than one person) the death of the survivor of such persons;

(f) The Shared Equity Owner or any Spouse of the Shared Equity Owner ceasing to use the Property as his only place of residence or renting the Property or allowing it to be occupied by a third party without the prior written consent of Scottish Ministers;

(g) The Shared Equity Owner or any Spouse of the Shared Equity Owner granting a New Security without first obtaining the written consent of Scottish Ministers;

(h) Any security holders calling up their security or the security holders or any other party exercising any other process of law which would affect the Property;

(i) Any default under the Standard Security;

(j) It is established to the reasonable satisfaction of Scottish Ministers that the Shared Equity Owner has provided or permitted the provision of false or misleading information to Scottish Ministers or the Administering Agent in connection with the granting or transmission of this Agreement; or

(k) the shared equity owner becomes the proprietor of another dwelling house in addition to the property

“Property” means the whole of the property at [FULL POSTAL ADDRESS INCLUDING POSTCODE MUST BE INSERTED HERE];

“Ranking Agreement” means the agreement regulating the ranking of standard securities between Scottish Ministers, the Shared Equity Owner and

[TO BE INSERTED BY PURCHASER'S SOLICITOR];

“Scottish Ministers’ Proportion” either [# %] or, if the terms of clause 3 have been implemented in full (including without prejudice all sums due to Scottish Ministers thereunder having been paid), the New Proportion;

“Spouse” means (a) in the case of a marriage between persons of different sexes, a person who is the husband or the wife of the Shared Equity Owner; or (b) in the case of a marriage between persons of the same sex one of whom is the Shared Equity Owner, the other party to that marriage, or (c) the civil partner of the Shared Equity Owner in terms of the Civil Partnership Act 2004 or (d) a person who lives with the Shared Equity Owner as the husband or the wife;

“Standard Security” means the standard security by the Shared Equity Owner in favour of Scottish Ministers for the Shared Equity Owner’s obligations in terms of this Agreement;

“Valuer” means the District Valuer of HM Revenue and Customs for the district in which the Property is situated or if otherwise agreed between the Parties such other professionally qualified valuer as Scottish Ministers and the Shared Equity Owner may agree;

and derivative expressions of any defined term shall be construed accordingly.

1.2 References to:

1.2.1 statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force;

1.2.2 “including” shall not be construed as limiting the generality of the words preceding it;

1.2.3 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

1.2.4 this Agreement and to any provisions of it or to any other document referred to in this Agreement shall be construed as references to it in force for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;

1.2.5 any person are to be construed to include references to a corporation, firm, owner, partnership, joint venture, unincorporated body of persons, individual or any state or agency of a state, whether or not a separate legal entity;

1.2.6 any person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

1.2.7 a clause means a clause of this Agreement;

1.2.8 clause headings are for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.9 Scottish Ministers includes the Administering Agent or other persons authorised to act on behalf of Scottish Ministers; and

1.2.10 the consent of Scottish Ministers shall be a reference to their prior written consent.

1.3 For the avoidance of doubt, this Agreement supersedes any previous agreement, whether written or oral, expressed or implied, between the Parties to it (or any of them) in relation to the subject matter of this Agreement.

1.4 Obligations undertaken by more than one person shall be undertaken by each jointly and severally.

1.5 Unless otherwise stated any consent, approval or other determination of Scottish Ministers whether in this Agreement, the Standard Security or the Ranking Agreement shall not be unreasonably withheld or delayed nor given subject to unreasonable conditions.

2. Obligation to Pay

Subject always to the terms of clause 2.7 and clause 5 (Scottish Ministers' Right of Pre-emption):

2.1 If the Shared Equity Owner proposes to transfer their interest in the Property the Shared Equity Owner shall (1) notify Scottish Ministers as soon as reasonably possible; (2) provide them with such information about the proposed sale as Scottish Ministers may reasonably require; and (3) use all reasonable endeavours to ensure that the Open Market Conditions apply including without prejudice ensuring that all duties of care under the relevant Home Report are extended to Scottish Ministers on terms which Scottish Ministers consider to be satisfactory.

2.2 If the proposed transfer is an Open Market Sale the Shared Equity Owner shall pay to Scottish Ministers, Scottish Ministers' Proportion of the Actual Open Market Value on or before the date of settlement of the Open Market Sale.

2.3 If the proposed transfer is not an Open Market Sale it shall only take place with the consent of Scottish Ministers which consent shall not be unreasonably withheld or delayed but if granted shall be given subject to such conditions as Scottish Ministers may reasonably require in order to ensure that they receive payment of Scottish Ministers' Proportion of the Deemed Open Market Value.

2.4.1 Subject to the terms of clause 2.4.2, upon the occurrence of a Payment Event other than in the circumstances set out in clauses 2.1 – 2.3 inclusive Scottish Ministers shall be entitled to instruct the Valuer in terms of this Agreement to determine the Deemed Open Market Value as at a date ("Valuation Date") which is either on, or within a reasonable period of, the date when that Payment Event occurred.

2.4.2 If the Payment Event is a default which is capable of remedy Scottish Ministers shall not take any action under clause 2.4.1 or clause 6.1 unless (a)

they have previously delivered to the Shared Equity Owner a notice which specifies in reasonable detail the nature of the default and a period (“Remediation Period”) – which shall be not less than 28 days – in which to remedy the same and (b) the Remediation Period has elapsed and the default has not been remedied to the reasonable satisfaction of Scottish Ministers.

2.5 Once the Deemed Open Market Value has been determined in accordance with this Agreement Scottish Ministers shall be entitled at any time thereafter to serve notice (“Payment Notice”) upon the Shared Equity Owner requiring him to make payment of Scottish Ministers’ Proportion of the Deemed Open Market Value.

2.6 In the event that a Payment Notice is served the Shared Equity Owner shall within seven days of receipt of the Payment Notice make payment to Scottish Ministers of Scottish Ministers’ Proportion of the Deemed Open Market Value.

2.7 For the avoidance of doubt:

2.7.1 The terms of clause 5 (Scottish Ministers’ Right of Pre-emption) shall take precedence over this clause 2 (Obligation to Pay) in the event that the Scottish Ministers’ right of pre-emption is exercised; and

2.7.2 The terms of clause 2 shall not apply in relation to any transfer or transmission to a Spouse who assumes the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers within six months of such transfer or transmission all as set out in sub paragraph (c) of the definition of ‘Payment Event’.

3. Tranching Up

3.1 At any time after the Date of Entry the Shared Equity Owner will be entitled to reduce Scottish Ministers’ Proportion as set out in this clause 3.1 provided always that:

3.1.1 the Shared Equity Owner shall only be entitled to exercise his right to

reduce Scottish Ministers' Proportion in terms of this clause 3.1 if he shall have complied with, performed and discharged all of the obligations incumbent upon him in terms of this Agreement.

3.1.2 Subject to the terms of this Clause the Standard Security Scottish Ministers' Proportion expressed as a percentage of the Property after the Shared Equity Owner's exercise of this right shall be a minimum of 5% lower than it was prior to the Shared Equity Owner's exercise of that right (for example if Scottish Ministers Proportion before exercise is 30% Scottish Ministers' Proportion after exercise must be 25% or less).

3.1.3 For the avoidance of doubt Scottish Ministers Proportion cannot be reduced so as to be less than 10%. For example if Scottish Ministers' Proportion is 20% it may only be reduced to 15% or 10% and if it is 19% it can only be reduced to 10%.

3.2 The Shared Equity Owner shall serve on Scottish Ministers a notice ("Reduction Notice") in writing specifying the amount expressed as a percentage ("New Proportion") to which Scottish Ministers' Proportion is to be reduced and requiring Scottish Ministers to instruct the Valuer to determine the Deemed Open Market Value as at the date of service of the Reduction Notice and Scottish Ministers shall notify the Shared Equity Owner of the amount thereof in writing within seven days of the said determination by the Valuer.

3.3 Provided payment by the Shared Equity Owner of the amount necessary to reduce Scottish Ministers' Proportion in terms of clause 3.1 is effected within three months of such notification by Scottish Ministers, the Shared Equity Owner may reduce Scottish Ministers' Proportion to the New Proportion. The amount due to Scottish Ministers by the Shared Equity Owner in terms of this clause 3.3 shall be calculated in accordance with the following formula:

A x B

where:

A = the difference between Scottish Ministers' Proportion at the date of the Reduction Notice and the New Proportion; and

B = the Deemed Open Market Value.

As an example if the Deemed Open Market Value of the Property at the date of the Reduction Notice was £120,000; Scottish Ministers' Proportion at the Date of the Reduction Notice was 30% and the New Proportion was 20%; the amount due to Scottish Ministers would be £12,000 being 10% (i.e. 30% - 20%) x £120,000.

3.4 The reasonable costs of any such determination by the Valuer shall be paid on demand by the Shared Equity Owner to Scottish Ministers.

3.5 The Valuer shall be deemed to be acting as an expert and not as an arbiter and his decision as to the Deemed Open Market Value shall be final and binding on the Parties.

3.6 Upon payment by the Shared Equity Owner the Shared Equity Owner and Scottish Ministers shall forthwith execute a memorandum detailing the New Proportion.

4. Expenses

4.1 The Shared Equity Owner shall be liable for (a) all expenses incurred in connection with the registration of the Standard Security and the Ranking Agreement in the Land Register, (b) the costs of registering this Agreement in the Books of Council and Session and of obtaining one extract and (c) any other reasonable expenses properly incurred by Scottish Ministers in connection with the preparation and completion of this Agreement, the Standard Security and the Ranking Agreement other than the professional charges of their legal advisers.

4.2 The Shared Equity Owner shall pay on demand to Scottish Ministers on a full indemnity basis all reasonable costs and expenses (including but not limited to legal, valuation, registration and out-of-pocket expenses) properly incurred by Scottish Ministers in connection with any actual, proposed or attempted amendment, exercise, enforcement, discharge, extension, variation, waiver or preservation of any rights under this Agreement and/or the Standard Security and/ or the Ranking Agreement.

5. Scottish Ministers' Right of Pre-emption

5.1 In the event of the Shared Equity Owner deciding to sell or otherwise dispose of the Property or, subject to clause 2.4.1, on the occurrence of a Payment Event the Shared Equity Owner shall in the first instance notify Scottish Ministers and Scottish Ministers or their nominees shall have the option of purchasing the Property at a price to be calculated in accordance with the following formula:

$$A \times (100 - B) \%$$

where:

A = the price determined by the Valuer to be the value of the Property if purchased in the open market by a willing buyer from a willing seller at arm's length as determined by the Valuer having proper regard to such matters as he may in his professional judgement deem appropriate including without prejudice to the foregoing the impact on value of (i) any failure on the part of the Shared Equity Owner to comply with, perform and discharge all of the obligations incumbent upon him in terms of this Agreement and the Standard Security (ii) whether vacant possession is available (iii) any Encumbrance affecting the Property and (iv) any increase in value arising from any additions or improvements carried out to the Property provided however that any diminution in value arising from adaptations which have been carried out to meet the needs of a disabled person shall be disregarded; and

B = Scottish Ministers' Proportion.

For the avoidance of doubt, the Shared Equity Owner shall be bound to sell the whole of the Property and not only part thereof and the other terms and conditions of the sale shall be such as Scottish Ministers shall, acting reasonably, determine.

As an example if at the time when the option becomes exercisable under clause 5.1 the price determined by the Valuer is £120,000 and Scottish Ministers' Proportion is 20%; the amount to be paid by Scottish Ministers or their nominees will be £96,000 being $£120,000 \times (100 - 20)\%$.

5.2 The Scottish Ministers' right of pre-emption in terms of this clause 5 shall be exercised by Scottish Ministers giving notice in writing to the Shared Equity Owner within twenty one days from the date of receipt by Scottish Ministers of written notice of determination of the price in terms of this clause 5.

5.3 In the event that Scottish Ministers decide not to exercise their right of pre-emption the terms of clause 2 (Obligation to Pay) shall apply.

6. Certificates and Determinations

6.1 A certificate signed by any duly authorised officer or employee of Scottish Ministers shall be prima facie evidence of any sums due to Scottish Ministers under this Agreement.

7. Interest and Losses

7.1 If the Shared Equity Owner fails to pay any amount payable by him under this Agreement, Scottish Ministers may charge the Shared Equity Owner interest on the overdue amount. The Shared Equity Owner shall pay the interest immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 2% per annum above the base lending rate (or the equivalent) of the Royal Bank of Scotland plc prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest thereon, or in the event of that ceasing to exist, such other rate equivalent to it as Scottish

Ministers may specify. Such interest shall accrue on a daily basis and be compounded quarterly.

7.2 The Shared Equity Owner shall indemnify and keep indemnified Scottish Ministers against all losses, liabilities, costs and expenses – including without prejudice any depletion of value of the Property – reasonably incurred by Scottish Ministers as a result of any breach by the Shared Equity Owner of any terms of this Agreement, the Standard Security and/ or the Ranking Agreement.

8. Transfer

8.1 The Shared Equity Owner shall not at any time assign, transfer or novate any of its rights and/or obligations under this Agreement save to a Spouse who has entered into an agreement to assume the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers.

8.2 Scottish Ministers may at any time assign, transfer or novate any of its rights and/or obligations under this Agreement to any person.

8.3 Scottish Ministers may disclose to any person with whom it is proposing to enter, or has entered into, any kind of transfer, participation or other agreement in relation to this Agreement:

- a copy of this Agreement; and
- any information which Scottish Ministers have acquired in connection with this Agreement

9. Notices

9.1 Any notice to Scottish Ministers shall be addressed to:

The Scottish Ministers c/o *[insert details of Administering Agent or subsidiary including contact person]* or to the Scottish Ministers at such other address as Scottish Ministers may notify to the Shared Equity Owner in accordance with this Agreement.

9.2 Any notice to the Shared Equity Owner shall be addressed to the Shared Equity Owner at the Property.

10. Separate Provisions

If any provision of this Agreement is or becomes invalid, illegal or unenforceable that shall not affect the validity, legality or enforceability of any other provision.

11. Governing Law

This Agreement shall be governed by and construed according to Scots law and each of the parties submits to the exclusive jurisdiction of the Scottish courts.

12. Consent to Registration

The Parties consent to the registration hereof and of any such Certificate for preservation and execution. IN WITNESS WHEREOF this Agreement consisting of this and the [] preceding pages is executed as follows:

SUBSCRIBED by the Shared Equity Owner at
on the day of (Year-figure)
..... (Signature)
..... (Full Name)
in the presence of:
..... Witness (Signature)
..... Full Name
..... Address
.....

SUBSCRIBED for and on behalf of Scottish Ministers by

on the day of (Year-figure)

..... (Signature) Authorised signatory

..... (Full Name)

in the presence of:

..... Witness (Signature)

..... Full Name

..... Address

.....

STANDARD SECURITY

by

[Owner]

in favour of

The Scottish Ministers

I/ We, #, (the "Owner") residing at # (declaring that where these presents are granted by more than one person the singular herein includes the plural and all obligations herein are undertaken jointly and severally) hereby in security of all sums, liabilities and obligations which are now or may hereafter become due by the Owner to the Scottish Ministers (hereinafter referred to as 'Scottish Ministers') by virtue of the Minute of Agreement between Scottish Ministers and the Owner signed by the Owner on or about the date hereof (hereinafter referred to as the "Shared Equity Agreement") and any variation thereof, GRANT a Standard Security in favour of Scottish Ministers over ALL and WHOLE **[TO BE INSERTED BY PURCHASER'S SOLICITOR]** (hereinafter referred to as the 'Property'); The Standard Conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970 and any lawful variation thereof operative for the time being shall apply; And the Owner agrees that the Standard Conditions shall be varied to the effect that:

- (a) standard condition 1 shall be modified to the effect that it shall be an obligation on the Owner where there is an obligation to maintain the security subjects that such obligation shall be deemed to include an obligation to renew or procure the renewal of the same should this be reasonably required by Scottish Ministers;
- (b) standard conditions 3 and 4 shall be modified to the effect that it shall be an obligation on the Owner to ensure that all consents and approvals under all statutes (including all bye-laws, instruments, orders and regulations for the time being made thereunder or deriving therefrom) and the regulations and codes of practice of any governmental, local or other competent authorities affecting the Property have been obtained and are complied with at all times;

- (c) standard condition 4 shall be varied to the effect that reference to any notice or order issued or made by virtue of the Town and Country Planning (Scotland) Acts 1997 to 2006 and any subsequent amendments shall be construed as including all notices or orders of whatsoever kind made, given or issued by any authority or person which may affect the value of the Property in any way;
- (d) standard condition 5 shall be modified to the effect that it shall be an obligation on the Owner:
 - (i) to maintain such insurances in relation to the Property as are normally maintained by prudent owners of similar properties;
 - (ii) without prejudice to the foregoing sub-paragraph (i), to effect and maintain insurance against loss or damage to the Property by fire, lightning, explosion, storm, tempest, flood, aircraft (other than hostile aircraft), landslip, subsidence, riot and civil commotion, malicious damage and such other risks as Scottish Ministers may from time to time require and that with sound and reputable insurers and the Owner shall procure that the interest of Scottish Ministers as a heritable creditor is noted on the relevant policy or policies of insurance and that in such form and manner as Scottish Ministers may specify from time to time;

- (iii) to ensure that each such insurance policy will not as against Scottish Ministers be rendered void, voidable or unenforceable by reason of any act, omission, breach of warranty or non-disclosure by the Owner or any occupier of the Property. Scottish Ministers shall have full power to settle and adjust with the insurers all questions with respect to claims under each such policy. The Owner shall also ensure that all monies payable by the insurers under each such policy will be paid to the good discharge therefor and that the insurers will not permit the policy to lapse or attempt to void the same without giving at least 28 days' notice to Scottish Ministers;
- (iv) not to insure the Property or any part thereof otherwise than in accordance with the foregoing obligation and, if the Owner shall at any time effect any insurance in breach of such obligation, then (subject as aftermentioned) to hold all monies received under any such last-mentioned insurance (hereinafter referred to as the "Insurance Monies") as trustee for Scottish Ministers and, on demand, to pay the same to Scottish Ministers to be applied as if the same arose under a policy effected in terms hereof; except that the Owner will not be held to be in breach of the foregoing obligation if the Owner holds as trustee and pays to Scottish Ministers as aforesaid part only of the Insurance Monies, in circumstances where (a) the Owner is required by the holder of a standard security over the Property which Scottish Ministers have agreed shall rank prior to these presents in respect of the Property (hereinafter referred to as the "Prior Ranking Secured Creditor") to pay the Insurance Monies to the Prior Ranking Secured Creditor towards repayment of sums owed by the Owner to the Prior Ranking Secured Creditor; and (b) the part of the Insurance Monies held by the Owner as trustee and paid to Scottish Ministers as

aforesaid is an amount which is no less than the total amount of the Insurance Monies actually received by the Owner multiplied by the Scottish Ministers' Proportion (as that term is defined in the Shared Equity Agreement) then applicable; and

- (v) the insurance to be effected in terms of Standard Condition 5(a) shall provide index linked cover to the extent of (i) full reinstatement value or (ii) the full price at which the Property would be sold in the open market (a certificate from Scottish Ministers being conclusive in that regard) or (iii) the market value from time to time whichever is the highest;

for the purposes of this Standard Security, the terms 'Scottish Ministers' and 'the Owner' herein contained shall be deemed to be references to the terms 'creditor' and 'debtor' respectively contained in the said standard conditions which shall be construed accordingly; And the Owner grants warrandice excepting therefrom standard security by the Owner in favour of [TO BE INSERTED BY PURCHASER'S SOLICITOR] dated on or about the date hereof; And the Owner declares that as at the date of the execution of these presents the Property is neither (a) a matrimonial home in relation to which a spouse of the Owner has occupancy rights within the meaning of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended nor (b) a family home in relation to which a civil partner of the Owner has occupancy rights within the meaning of the Civil Partnership Act 2004:: IN WITNESS WHEREOF these presents consisting of this and the [] preceding pages are executed as follows:

RANKING AGREEMENT

among

[Bank/ Building Society]

and

The Scottish Ministers

and

[Owner]

Clauses

1. Ranking of Securities
2. Security to be Continuing
3. Agreement
4. Negative Pledge
5. Authority to Release Information
6. Consent
7. Variation
8. Transfers
9. Miscellaneous
10. Notices
11. Definitions
12. Other Security
13. Separate Provisions
14. Governing Law
15. Consent to Registration

RANKING AGREEMENT

This RANKING AGREEMENT is made amongst:

- (1) [TO BE INSERTED BY PURCHASER'S SOLICITOR] (the '**Primary Lender**');
- (2) The Scottish Ministers ('**Scottish Ministers**'); and
- (3) [TO BE INSERTED BY PURCHASER'S SOLICITOR] (the '**Owner**').

Definitions are given in Clause 11.

Whereas

- (A) The Owner has granted or is about to grant in favour of the Primary Lender a fixed security over the Property;
- (B) The Owner has granted or is about to grant in favour of Scottish Ministers a fixed security over the Property;
- (C) The Primary Lender and Scottish Ministers wish to regulate the ranking of the Securities; and
- (D) The Owner has agreed to the terms of this Agreement.

It is agreed as follows:

Ranking of Securities

1.1 The Primary Lender, Scottish Ministers and the Owner agree that the sums secured or to be secured by the Primary Lender Fixed Security and the Postponed Fixed Security shall rank in the following order of priority:

1.1.1 the Primary Lender Fixed Security to the extent of the Primary Lender Priority Debt; then

1.1.2 the Postponed Fixed Security to the extent of the Postponed Debt; then

- 1.1.3 the Primary Lender Fixed Security to the extent of the balance (if any) of the Primary Lender Debt.
- 1.2 The ranking and priority set out in Clause 1.1 shall take effect notwithstanding any of the following:
 - 1.2.1 the nature of the securities created by the Primary Lender Fixed Security and the Postponed Fixed Security and the dates of execution and registration of them;
 - 1.2.2 any provision contained in any of the Securities;
 - 1.2.3 the date or dates on which moneys have been or may be advanced or become due, owing or payable under the Primary Lender Fixed Security and the Postponed Fixed Security respectively;
 - 1.2.4 any fluctuation from time to time in the amounts secured by the Primary Lender Fixed Security or the Postponed Fixed Security including any reduction of those amounts to nil;
 - 1.2.5 the existence of any credit balance on any current or other account of the Owner with either the Primary Lender or Scottish Ministers;
 - 1.2.6 the appointment of a Trustee in bankruptcy to the Owner, his sequestration, his apparent insolvency and/ or the appointment of a judicial factor to all or any part of his assets in respect of the Owner or over all or any part of the assets;
 - 1.2.7 the sale or other disposal of any land or buildings or any interest in any land or buildings prior to enforcement;
 - 1.2.8 any present or future mortgage or other charge granted by the Owner to either the Primary Lender or Scottish Ministers (other

than the Securities) (unless otherwise agreed in writing by the Primary Lender or Scottish Ministers); and

1.2.9 the provisions of Section 13 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

Security to be Continuing

The Securities shall rank as provided in this Agreement as continuing securities for repayment of the amounts owing to each of the Primary Lender and Scottish Ministers from time to time by the Owner or by any person or Owner whose obligations to the Primary Lender or Scottish Ministers are guaranteed by the Owner.

Agreement

If a Trustee in bankruptcy or a judicial factor regards this Agreement as failing to bind him in the distribution of the proceeds of sale of the assets of the Owner (and in as far as the refusal of the Trustee in bankruptcy or the judicial factor causes prejudice to the Primary Lender or Scottish Ministers), the Primary Lender and Scottish Ministers will compensate each other to the extent to which it has benefited as a result of this refusal.

Negative Pledge

The Owner shall not grant any further fixed charges over the Property without the written consent of the Primary Lender and Scottish Ministers.

Authority to Release Information

5.1 During the continuance of each of the Primary Lender Fixed Security and the Postponed Fixed Security, the Primary Lender and Scottish Ministers may disclose to each other information concerning the Owner and its affairs in such manner and to such extent as the Primary Lender and Scottish Ministers may wish and the Owner consents to such disclosure.

5.2 The Primary Lender agrees to give notice promptly to Scottish Ministers upon increasing the limit of any of the facilities for the time being granted by it to the Owner or upon granting it new facilities.

Consent

The Primary Lender and Scottish Ministers consent to the grant by the Owner of the Securities and each acknowledge the right of the other to production and delivery of copies of the Securities.

Variation

The Primary Lender Fixed Security and the Postponed Fixed Security are varied to the extent specified in this Agreement and this Agreement shall be construed and receive effect as a variation within the meaning of Section 16 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

Transfers

The Primary Lender shall not assign or transfer the benefit of the Primary Lender Fixed Security and Scottish Ministers shall not assign or transfer the benefit of any of the Postponed Fixed Security unless the assignee or transferee first undertakes in writing to the Primary Lender and/ or Scottish Ministers, as the case may be, to be bound by the provisions of this Agreement as if such transferee were a party to this Agreement.

Miscellaneous

Unless and until the Primary Lender Fixed Security is discharged, Scottish Ministers agree that any obligation under the Postponed Fixed Security to deposit deeds and documents of title, and all policies of insurance with Scottish Ministers shall be deemed satisfied and complied with if those are deposited with the Primary Lender.

Notices

10.1 All notices or other communications to be made or given under this Agreement shall be in writing and shall be by first-class pre-paid post or by fax.

10.2 Receipt shall be deemed to have occurred forty-eight hours after posting (unless hand-delivered and then at the time of delivery) and if by fax when sent provided a transmission report is received.

10.3 Any notice to the Primary Lender shall be addressed to:

[TO BE INSERTED BY PURCHASER'S SOLICITOR]

10.4 Any notice to Scottish Ministers shall be addressed to:

The Scottish Ministers *c/o [insert details of Administering Agent or subsidiary including contact person]* or to the Scottish Ministers at such other address as Scottish Ministers may notify to the Owner in accordance with this Agreement.

10.5 Any notice to the Owner shall be addressed to the Owner at the Property.

Definitions

In the interpretation of this Agreement:

11.1 'Primary Lender Debt' means all or any monies and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to the Primary Lender by the Owner, whether actually or contingently, solely or jointly and whether as principal or surety and whether or not the Primary Lender shall have been an original party to the relevant transaction, and including interest, discount, commission and other lawful charges or expenses which the Primary Lender may in the course of its business charge or incur in respect of any of those matters or for keeping the Owner's account, and so that interest shall be computed and

compounded according to the usual Primary Lender rates and practice as well after as before any demand made or decree obtained;

- 11.2 'Primary Lender Fixed Security' means the standard security over the Property granted by the Owner in favour of the Primary Lender dated on or about the date hereof and about to be registered in the Land Register under Title Number [TO BE INSERTED BY PURCHASER'S SOLICITOR] in security for the Primary Lender Debt;
- 11.3 'Primary Lender Priority Debt' means the Primary Lender's Debt not exceeding £[] Sterling (or such greater amount, if any, as shall be agreed in writing between the Primary Lender and Scottish Ministers) together with (a) outstanding interest on that amount and (b) all outstanding commission, charges, fees, costs and expenses arising or incurred in connection with it;
- 11.4 'Postponed Debt' means all sums due and to become due to Scottish Ministers by the Owner whether as principal debtor, co-obligant, guarantor, surety or otherwise (including all present, future or contingent obligations owed to Scottish Ministers, whether such obligations exist now or arise in the future) together with interest and charges, interest on them and all commission, charges, fees, costs and expenses arising or incurred in connection with those sums;
- 11.5 'Postponed Fixed Security' means the standard security over the Property granted by the Owner in favour of Scottish Ministers dated on or around the date hereof and about to be registered in the Land Register under Title Number **TO BE INSERTED BY PURCHASER'S SOLICITOR** in security for the Postponed Debt;
- 11.6 'Property' means ALL and WHOLE the subjects known as and forming **TO BE INSERTED BY PURCHASER'S SOLICITOR**, being the whole subjects registered in the Land Register of Scotland under Title Number **TO BE INSERTED BY PURCHASER'S SOLICITOR** ;

- 11.7 'Securities' means the Primary Lender Fixed Security and the Postponed Fixed Security;
- 11.8 'enforce' (and all derivations from it) means the taking of any of the following actions:
- (1) the exercising a power of sale or otherwise utilising the rights given to a creditor under any of the Securities;
 - (2) the suing for payment of any the Primary Lender Debt or the Postponed Debt;
 - (3) the petitioning for a sequestration order;
 - (4) the granting of a voluntary Trust Deed or the making of a composition contract or arrangement with creditors; or
 - (5) the exercising of any rights of set-off, retention combination of accounts or similar right in respect of the Primary Lender Debt or the Postponed Debt;

11.9 Derivative expressions of any defined term shall be construed accordingly;

11.10 References to:

- 11.10.1 statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force;
- 11.10.2 'including' shall not be construed as limiting the generality of the words preceding it;
- 11.10.3 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

- 11.10.4 this Agreement and to any provisions of it or to any other document referred to in this Agreement shall be construed as references to it in force for the time being as amended, varied, supplemented, restated, substituted or novated from time to time;
- 11.10.5 any person are to be construed to include references to a corporation, firm, owner, partnership, joint venture, unincorporated body of persons, individual or any state or agency of a state, whether or not a separate legal entity;
- 11.10.6 any person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect; and
- 11.10.7 clause headings are for ease of reference only and are not to affect the interpretation of this Agreement; and

11.11 For the avoidance of doubt, this Agreement supersedes any previous agreement, whether written or oral, express or implied, between the parties to it (or any of them) in relation to the subject matter of this Agreement.

Other Security

The Primary Lender shall be entitled at any time at its discretion and without consulting the Owner or Scottish Ministers to transact and deal with any other securities or guarantees of any kind that may be held by it in respect of the Owner's obligations to it and may sell, dispose of or realise such other securities in any order which it may determine and this Agreement shall remain in full force and effect notwithstanding such transactions or dealings.

Separate Provisions

If any provision of this Agreement is or becomes invalid, illegal or unenforceable that shall not affect the validity, legality or enforceability of any other provision.

Governing Law

This Agreement shall be governed by and construed according to Scots law and each of the parties submits to the exclusive jurisdiction of the Scottish courts.

Consent to Registration

The parties to this Agreement consent to its registration for preservation.

IN WITNESS WHEREOF this Agreement consisting of this and the # preceding pages is executed as follows:

SUBSCRIBED for and on behalf of the Primary Lender by its duly authorised signatory at

on the day of (Year-figure)

..... (Signature)

..... (Full Name)

in the presence of:

..... Witness (Signature)

..... Full Name

..... Address

.....

SUBSCRIBED by the Owner at

on the day of (Year-figure)

..... (Signature)

..... (Signature)

in the presence of:

..... Witness (Signature)

..... Full Name

..... Address

.....

..... Occupation

SUBSCRIBED for and on behalf of the Scottish Ministers by

on the day of (Year-figure)

..... (Signature)

..... (Full Name)

in the presence of:

..... Witness (Signature)

..... Full Name

..... Address

.....

..... Occupation