



Registration of a Charge

Company name: **THE EDUCATION SUPPORT COMPANY (LEEDS) LIMITED**

Company number: **04190375**



X51CQTOP

Received for Electronic Filing: **25/10/2016**

Details of Charge

Date of creation: **20/10/2016**

Charge code: **0419 0375 0004**

Persons entitled: **BNP PARIBAS (AS SECURITY TRUSTEE)**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **HUW KNOTT, CMS CAMERON MCKENNA LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 4190375

Charge code: 0419 0375 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th October 2016 and created by THE EDUCATION SUPPORT COMPANY (LEEDS) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 25th October 2016 .

Given at Companies House, Cardiff on 26th October 2016

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

SUPPLEMENTAL DEBENTURE

between

THE EDUCATION SUPPORT COMPANY (LEEDS) LIMITED
as Chargor

and

BNP PARIBAS
as Security Trustee

Date: 20 October 2016

Ref: BNP004.00016

INDEX

1.	Interpretation.....	3
2.	Covenant to Pay	5
3.	Charging Clause	6
4.	Negative Pledge	7
5.	Further Assurance	8
6.	Continuation.....	8
7.	Counterparts	9
8.	Governing Law.....	9
9.	Jurisdiction.....	9
	Schedule 1 Assigned Contracts	10
	Schedule 2 Form of Notice of Assignment and Acknowledgement of Receipt – Assigned Contracts	12

THIS DEED is made

20 October

2016

BETWEEN:

- (1) **THE EDUCATION SUPPORT COMPANY (LEEDS) LIMITED**, a company incorporated under the laws of England and Wales with registered number 04190375 whose registered office is at Cannon Place, 78 Cannon Street, London EC4N 6AF (the **Chargor**); and
- (2) **BNP PARIBAS** in its capacity as Security Trustee (as defined below) (the **Security Trustee**),
and is supplemental to the Debenture (as defined below).

Background

- A. This Deed is supplemental to a guarantee and debenture granted by the Chargor in favour of the Security Trustee dated 31 October 2001, and as may be further amended, restated, supplemented, varied and/or novated from time to time (the **Debenture**).
- B. The Chargor is entering into this Deed as a condition of a consent letter dated on or around the date of this Deed in respect of the Credit Agreement (as hereinafter defined).
- C. The Security Trustee and the Chargor intend this document to take effect as a deed.
- D. The Security Trustee holds the benefit of this Deed on trust for the Beneficiaries under the terms of the Finance Documents (each hereinafter defined).

NOW THEREFORE IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed:

Assigned Contracts means those agreements and contracts, brief particulars of which are set out in Schedule 1 (*Assigned Contracts*) together with any and each other agreement or instrument supplementing or amending any such agreement or contract and any other agreement, instrument or contract entered into by the Chargor in relation to or in connection with the Project from time to time including, without limitation, the Project Contracts, and any one of them shall be an **Assigned Contract**;

Assigned Contract Claims means, in relation to the Assigned Contracts, all of the Chargor's right title, interest and benefit in, under and to the Assigned Contracts; and any sums payable to the Chargor pursuant to all representations, warranties, undertakings and indemnities to agreements with and security to be provided in favour of the Chargor in respect of or pursuant to the Assigned Contracts; and any rights of abatement or set-off and all other rights of recovery under or pursuant to any of the Assigned Contracts; and any net proceeds of any claims, awards and judgments which may at any time be received or receivable by the Chargor pursuant to any of the Assigned Contracts;

Beneficiaries means the Agent, the Lead Arranger, the Co-Lead Arranger, the Security Trustee, the Lenders, the Technical Bank, the Account Bank and the Hedging Counterparty and includes any one or more of them;

Credit Agreement means the credit agreement dated 31 October 2001, originally between, amongst others, (1) the Chargor, (2) The Education Support Company Holdings (Leeds) Limited as Holdco, (3) BNP Paribas as Original Lender, Lead Arranger, Agent, Security Trustee, Account Bank and Technical Bank, and (4) Bankgesellschaft Berlin AG as Original Lender and Co-Lead Arranger, and as may from time to time be further amended, varied, novated, supplemented or replaced including, without limitation, by the increase or extension of maturity of the facilities;

Parties means the parties to this Deed;

Secured Assets means all or any of the assets and rights from time to time subject or expressed to be subject to the security created, or which may at any time be created, pursuant to any provision of this Deed;

Secured Sums means all money and liabilities covenanted and/or guaranteed to be paid or indemnified by the Chargor under Clause 2.1 (*Covenant to Pay*); and

Security Trustee means BNP Paribas in its capacity as security trustee for the Beneficiaries and any other successor security trustee appointed under the terms of the Credit Agreement and/or the Intercreditor and Accounts Deed.

1.2 Interpretation

1.2.1 References to this Deed, any other Finance Document or to any other document shall include references to this Deed and its Schedules, any other Finance Document or to such other document as amended, varied, supplemented, replaced, novated and/or restated in any manner from time to time but in accordance with the terms of the Credit Agreement.

1.2.2 Save as provided in Clause 1.1 (*Definitions*) or otherwise defined in this Deed, capitalised terms defined in the Credit Agreement and/or the Debenture shall have, unless expressly defined in this Deed, the same meaning in this Deed.

1.2.3 The provisions of clause 1 (*Definitions and interpretation*) of the Credit Agreement shall apply to this Deed (including the provisions incorporated herein by clause 1.23 (*Interpretation*) of the Credit Agreement as if expressly set out herein, *mutatis mutandis*, with each reference to the Credit Agreement therein being deemed to be a reference to this Deed.

1.2.4 This Deed is a Finance Document and a Security Document.

1.2.5 References to the Security Trustee shall include the successors, assignees and transferees of the Security Trustee.

1.2.6 In this Deed, the singular includes the plural and vice versa.

- 1.2.7 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.
- 1.2.8 This Deed is subject to the terms and conditions of the Intercreditor and Accounts Deed and the Credit Agreement. In the event of any inconsistency or conflict between the provisions of the Intercreditor and Accounts Deed or the Credit Agreement and this Deed, the provisions of the Intercreditor and Accounts Deed or the Credit Agreement (as the case may be) shall prevail. In the event of any inconsistency or conflict between the provisions of the Intercreditor and Accounts Deed and the Credit Agreement, the provisions of the Intercreditor and Accounts Deed shall prevail.

2. COVENANT TO PAY

2.1 The Chargor hereby:

- 2.1.1 covenants that it will on demand in writing made to it by the Security Trustee pay or discharge to the Security Trustee all money and liabilities (including all Ancillary Liabilities) now or in the future due, owing or incurred by the Chargor to the Beneficiaries (or any of them) under or pursuant to the Finance Documents as and when any of the same fall due for payment; and
- 2.1.2 covenants and guarantees that it will on demand in writing made to it by the Security Trustee pay or discharge to the Security Trustee all money and liabilities (including all Ancillary Liabilities) now or in the future due, owing or incurred by Holdco to the Beneficiaries (or any of them) under or pursuant to the Finance Documents as and when any of the same fall due for payment,

in each case, whether on or after such demand, whether actually or contingently, whether solely or jointly with any other person, whether as principal or surety and whether or not the relevant Beneficiary was an original party to the relevant transaction and so that interest shall be computed and compounded in accordance with the relevant Finance Document (after as well as before any demand or judgment).

2.2 Indemnity

The Chargor hereby covenants that, if any of the Secured Sums are not recoverable on the basis of a guarantee (whether by reason of any legal limitation, illegality or incapacity on or of the Chargor on any other person or by reason of any other fact or circumstance) the Chargor will, as an additional and independent obligation, pay to the Security Trustee on demand an amount equal to the amount which the Chargor would have been liable to pay but for such irrecoverability and will on demand indemnify the Security Trustee against all losses, damages, costs and expenses incurred by the Security Trustee as a result of such irrecoverability.

2.3 Terms of Guarantee

The guarantee contained in Clause 2.1.2 (*Covenant to Pay*) is given by the Chargor subject to, and with the benefit of, the provisions set out in schedule 5 of the Debenture.

2.4 Demands from Security Trustee

The Security Trustee shall only be entitled to make a demand under this Deed after the Agent has given the Chargor notice in writing in accordance with the terms of clauses 20.1(ii) and (iii) (*Demand on Default*) or clause 20.2 (*Notice of Default*) (and, in the case of clause 20.2, delivered a written demand in accordance with the terms thereof) of the Credit Agreement. The making of one demand under this Deed will not preclude the Security Trustee making any further demands.

2.5 Third Parties

Any third parties dealing with the Security Trustee or any Receiver appointed under this Deed shall not be concerned to see or enquire as to the validity of any demand under this Deed.

3. CHARGING CLAUSE

3.1 Assignment

The Chargor with full title guarantee hereby assigns and agrees to assign to the Security Trustee as continuing security for the payment, discharge and performance of the Secured Sums the Assigned Contracts (and all Assigned Contract Claims) together with the benefit of all powers and remedies for enforcing the same.

3.2 Notices relating to the Assignment

Save where such assignments are acknowledged in the Direct Agreements, the Chargor shall execute notices of the assignments constituted by Clause 3.1 (*Assignment*) of this Deed in the form set out in Schedule 2 on the date hereof and:

3.2.1 forthwith deliver them to the recipient so indicated in the relevant notice of assignment (the **Recipient**); and

3.2.2 use reasonable endeavours to procure the prompt execution and delivery to the Security Trustee by the **Recipient** of an acknowledgement of such notice of assignment.

3.3 Representations

The Chargor on the date of this Deed hereby represents, warrants and covenants to and with the Security Trustee in respect of the Secured Assets that:

3.3.1 it is the sole and beneficial owner of all its right, title and interest in respect of the Secured Assets and that its rights in respect of the same are free from any Encumbrance, save for Permitted Encumbrances; and

3.3.2 except with the prior written consent of the Security Trustee there has been no waiver, release, amendment or termination of, or of any of its rights under, any of the Secured Assets.

3.4 Future Security Subject to this Deed

Without prejudice to Clause 4.1 (*Negative Pledge*), any Encumbrance created in the future by the Chargor (except for Permitted Encumbrances to the extent that they have priority, either pursuant to the terms of the Intercreditor and Accounts Deed or by operation of law, and except those in favour of the Security Trustee) shall be expressed to be subject to this Deed and shall rank in order of priority behind the charges created by this Deed.

3.5 Right to Deal

Notwithstanding that the Assigned Contracts have been assigned by way of security under this Deed, the Chargor shall continue to be entitled to exercise all its rights, powers and discretions under such Assigned Contracts and to receive any notices or money due thereunder until notice to the contrary is issued by the Security Trustee whereupon the Chargor shall act in accordance with that notice. Such notice may be issued by the Security Trustee at any time after an Enforcement Event has occurred and is continuing, unremedied or unwaived. This clause is without prejudice to the Chargor's undertakings and obligations and the further restrictions assumed or agreed by the Chargor under the terms of the Finance Documents.

4. NEGATIVE PLEDGE

4.1 The Chargor shall not, without the prior written consent of the Security Trustee:

4.1.1 create, or agree to create, or permit to arise or subsist, any Encumbrance (including any security conferring power to convert a floating charge into a fixed charge in relation to any of its Assets) over any of its Assets and/or the Assigned Contracts other than Permitted Encumbrances;

4.1.2 assign all or any part of the benefit of or any interest in or proceeds of or revenues derived from any Document and/or any Assigned Contract or sell, transfer, lend, license or otherwise dispose or part with possession of, by one or more transactions and whether related or not, the whole or any part of its Assets, except that this Clause 4.1.2 shall not apply to Permitted Disposals. Nothing in this Clause 4.1.2 shall permit the Chargor to dispose of assets which are subject to a fixed charge without consent from the Security Trustee. The Security Trustee shall, however, at the request and expense of the Chargor, promptly release any asset from any security over such asset constituted by this Deed if its disposal is a Permitted Disposal;

4.1.3 consent to any assignment of any of the Documents and/or any Assigned Contract (other than the Finance Documents) or any part thereof or of any benefit, obligation or interest therein or thereunder by any other party thereto save for:

- (a) transfers which are effected in accordance with the provisions of the Finance Documents (but so that, to avoid doubt, no such transfer may be effected which would cause a Default); and
- (b) assignments under the Security Documents.

5. FURTHER ASSURANCE

5.1 Further Assurance

The Chargor shall if and when required by the Security Trustee (acting reasonably):

- 5.1.1 execute and deliver such further charges or assignments in favour of the Security Trustee as the Security Trustee shall from time to time require (acting reasonably) over all or any of the Secured Assets or any rights relating thereto both present and future (including any substituted securities and any vendor's lien) and execute any other transfers or documents the Security Trustee may from time to time require for perfecting its title to the Secured Assets or any rights relating thereto or for vesting or enabling it to vest the same in itself or its nominees or in any purchaser, to secure all moneys, obligations and liabilities hereby covenanted to be paid or performed or otherwise hereby secured or to facilitate realisation of the Secured Assets or the exercise of the powers conferred on the Security Trustee, such further charges or assignments to be prepared by or on behalf of the Security Trustee at the cost of the Chargor and to contain an immediate power of sale without notice, a clause excluding section 93 and the restrictions contained in section 103 of the Law of Property Act 1925 and such other clauses for the benefit of the Security Trustee as the Security Trustee may require; and
- 5.1.2 execute, sign, perfect, do and register every such further assurance, document, act or thing as in the opinion of the Security Trustee may be necessary for the purpose of charging or otherwise securing the Secured Assets or perfecting the security constituted or intended to be constituted by this Deed.

6. CONTINUATION

- 6.1 Except insofar as supplemented hereby, the Debenture will remain in full force and effect.
- 6.2 References in the Debenture to "this Debenture", "this Deed", "hereof", "hereunder" and expressions of similar import shall be deemed to be references to the Debenture as amended by this Deed and to this Deed.
- 6.3 This Deed is supplemental to the Debenture. On and from the date of this Deed:
 - 6.3.1 this Deed and the Debenture shall be read and construed as one document and in particular the contracts assigned pursuant to clause 3 of the Debenture shall include the Assigned Contracts; and

6.3.2 each Chargor acknowledges that references to the "Debenture" in the Credit Agreement is a reference to the Debenture as supplemented by this Deed.

7. COUNTERPARTS

This Deed may be executed by any of the parties in any number of counterparts, all of which taken together shall have the same effect as if the signatures on the counterparts were on a single copy of this Deed.

8. GOVERNING LAW

This Deed and any non-contractual obligations arising from or in connection with it shall be governed by and construed in accordance with English law.

9. JURISDICTION

- 9.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including any dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed).
- 9.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle disputes and accordingly none of them will argue to the contrary.
- 9.3 This Clause 9 (*Jurisdiction*) is for the benefit of the Security Trustee only. As a result, the Security Trustee shall not be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

IN WITNESS WHEREOF this Deed has been duly executed and delivered as a deed by or on behalf of the parties on the dated stated at the beginning of this Deed.

SCHEDULE 1
ASSIGNED CONTRACTS

	Brief description of Assigned Contract	Date of Assigned Contract	Parties to Assigned Contract (include addresses for service of notices of those parties who are not parties to this Deed)
1.	Collateral Warranty to be provided from the Building Sub-contractor to Chargor	On or about the date of this Deed	Chargor Carillion Energy Services Limited , Carillion House, 84 Salop Street, Wolverhampton, WV3 0SR, for the attention of Andy Tarran
2.	Supplemental Agreement to the Principal Agreement	On or about the date of this Deed	Chargor Leeds City Council , Civic Hall, Leeds, LS1 1UR, for the attention of Leeds 7 Schools Project Director
3.	Supplemental Agreement to the Operating Agreements	On or about the date of this Deed	Chargor Carillion Services 2006 Limited , The Company Secretary, Carillion House, 84 Salop Street, Wolverhampton, WV3 0SR
4.	FM Guarantor guarantee confirmation letter in relation to the Supplemental Agreement to the Operating Agreements	On or about the date of this Deed	Chargor (addressee) Carillion JM Limited , Carillion House, 84 Salop Street, Wolverhampton WV3 0SR
5.	Independent Certifier Appointment	On or about the date of this Deed	Chargor BNP Paribas Artelia Projects UK Limited , The Broadgate Tower, Third Floor, 20 Primrose Street, London, EC2A 2RS, for the attention of the Company Secretary Carillion Services 2006 Limited , The Company Secretary, Carillion House, 84 Salop Street, Wolverhampton, WV3 0SR Leeds City Council , Civic Hall, Leeds, LS1 1UR, for the attention of

	Brief description of Assigned Contract	Date of Assigned Contract	Parties to Assigned Contract (include addresses for service of notices of those parties who are not parties to this Deed)
			Leeds 7 Schools Project Director
6.	Principal Designer Appointment	On or about the date of this Deed	Chargor Carillion Energy Services Limited, Carillion House, 84 Salop Street, Wolverhampton, WV3 0SR for the attention of Andy Tarran

SCHEDULE 2
FORM OF NOTICE OF ASSIGNMENT AND ACKNOWLEDGEMENT OF RECEIPT – ASSIGNED CONTRACTS

To: *[Details of Party to Assigned Contract]*

Date:

Dear Sirs

[Description of Relevant Document] (the **Assigned Contract**)

We refer to the Assigned Contract. We refer also to a supplemental debenture (the **Deed**) dated [●] made between BNP Paribas in its capacity as security trustee for certain beneficiaries named therein (the **Security Trustee**) and ourselves (the **Chargor**).

We hereby give you notice that by a first ranking assignment contained in the Deed, all of the Chargor's present and future right, title, interest and benefit in, under and to the Assigned Contract including any sums payable to the Chargor pursuant to all representations and warranties, undertakings and indemnities to, agreements with and security to be provided in favour of the Chargor in respect of or pursuant to the Assigned Contract, and any rights of abatement or set-off, and all other rights of recovery under or pursuant to the Assigned Contract and any net proceeds of any claims, awards and judgments which may at any time be received or receivable by the Chargor pursuant to the Assigned Contract, together with the benefit of all powers and remedies for enforcing the same were assigned to the Security Trustee by way of security.

We irrevocably and unconditionally instruct and authorise you as follows (notwithstanding any previous directions which we may have given you to the contrary):

1. All monies payable by you to the Chargor pursuant to the Assigned Contract shall be paid into account number *REDACTED* in the Chargor's name held with BNP Paribas (the **Receiving Account**) unless and until otherwise directed by the Security Trustee whereupon such monies shall be paid in accordance with the instructions of the Security Trustee.
2. Notwithstanding the assignment referred to above or the making of any payment by you to the Security Trustee pursuant to it, the Chargor shall remain liable under the Assigned Contract to perform all the obligations assumed by it under the Assigned Contract and neither the Security Trustee nor any receiver, delegate or sub-delegate appointed by it shall at any time be under any obligation or liability to you under or in respect of the Assigned Contract.
3. The Chargor shall not vary or waive (or agree to vary or waive) any provision (other than an immaterial provision) of the Assigned Contract or exercise any right to rescind or terminate the Assigned Contract without the prior written consent of the Security Trustee but otherwise the Chargor shall be entitled to exercise all its rights, powers and discretions under the Assigned Contract unless and until you receive written notice from the Security Trustee to the contrary, in

which event all rights, powers and discretions shall be exercisable by the Security Trustee or as it directs.

4. Unless otherwise directed by the Security Trustee, you shall furnish or disclose to the Security Trustee in addition to ourselves all notices, matters or things required under the Assigned Contract to be furnished and disclosed to ourselves.

All notices, matters or things required to be sent to the Security Trustee under the terms of this Notice of Assignment shall be sent to the Security Trustee at the address set out in (d) below or to such other address as shall be notified to you from time to time.

The instructions and authorisations contained in this Notice of Assignment shall remain in full force and effect until we and the Security Trustee together give you notice in writing revoking them.

This Notice of Assignment shall be governed by and construed in accordance with the laws of England.

Please acknowledge receipt of this Notice of Assignment and confirm that:-

- (a) you will pay all sums due under the Assigned Contract as directed by or pursuant to this Notice of Assignment;
- (b) you will not claim or exercise any set-off or counterclaim in respect of sums payable under the Assigned Contract;
- (c) you have not received any other notice of assignment or charge of the Assigned Contract or that any third party has or will have any right or interest whatsoever in, or has made or will be making any claim or demand or taking any action whatsoever in respect of the Assigned Contract; and
- (d) you will agree to and comply with the other provisions of this Notice of Assignment by signing the acknowledgement on the attached copy of this Notice of Assignment and returning that copy to the Security Trustee at 10 Harewood Avenue, London NW1 6AA marked for the attention of Agency UK.

Signed

For and on behalf of **The Education Support Company (Leeds) Limited**

[On Duplicate:

We acknowledge receipt of the Notice of Assignment of which this is a copy and confirm each of the matters referred to in the Notice of Assignment.

Signed Date:

For and on behalf of [*Party to Assigned Contract*]

EXECUTION PAGE TO THE SUPPLEMENTAL DEBENTURE

The Chargor

EXECUTED and DELIVERED AS A DEED by
THE EDUCATION SUPPORT COMPANY (LEEDS) LIMITED
acting by:

THOMAS COONEY

(Print Full Name)

REDACTED

(Signature)

Director

in the presence of:

REDACTED

Witness

JENNY MCHATTIE

Print Name

CMS Cameron McKenna LLP Address

Saltire Court

20 Castle Terrace

Edinburgh

The Security Trustee

EXECUTED and DELIVERED AS A DEED by
BNP PARIBAS in its capacity as Security Trustee
acting by:

(Print Full Name)

(Signature) Authorised Signatory

(Print Full Name)

(Signature) Authorised Signatory

EXECUTION PAGE TO THE SUPPLEMENTAL DEBENTURE

The Chargor

EXECUTED and DELIVERED AS A DEED by
THE EDUCATION SUPPORT COMPANY (LEEDS) LIMITED
acting by:

..... Director
(Print Full Name) (Signature)

in the presence of:

..... Witness
..... Print Name
..... Address
.....

The Security Trustee

EXECUTED and DELIVERED AS A DEED by
BNP PARIBAS in its capacity as Security Trustee
acting by:

CLAUDE TODD Authorised Signatory
(Print Full Name) (Signature) REDACTED

Geoffrey Houlgate Authorised Signatory
(Print Full Name) (Signature) REDACTED