

Open Market Shared Equity Scheme

Administrative Procedures

October 2018



Scottish Government
Riaghaltas na h-Alba
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Introduction

These administrative procedures provide detailed operational guidance for agents who administer the Open Market Shared Equity Scheme on behalf of the Scottish Government. They contain information on the following:

- the Open Market Shared Equity Scheme (Section one);
- the procedures for assessing, approving and paying grant (Section two);
- the reporting arrangements (Section three);
- Post Sales duties for Administering Agents (Section four).

These procedures also contain:

- the legal documentation that **must** be used for the Open Market Shared Equity Scheme (Annex A);
- an application form which each Administering Agent **must** ask individuals to complete when they are applying to the Open Market Shared Equity Scheme (Annex B);
- the procedures for establishing affordability and means testing (including worked examples showing how grant and equity stakes **must** be calculated) (Annex C);
- the standard style of passport letter that **must** be issued to applicants when giving them formal consent on behalf of the Scottish Ministers to search for a property (Annex D); and
- monthly summary report (Annex E).

Please note that any reference to rights and obligations contained in documentation is purely for convenience and regard can only be had to the documentation itself upon which appropriate legal advice should be taken.

Any questions regarding these procedures should be referred in the first instance to the relevant Scottish Government Housing Markets Team. Details are in Section eight.

When reference is made within this document to Scottish Government Solicitors, this means Harper Macleod LLP, The Ca'd'oro Building, 45 Gordon Street, Glasgow, G1 3PE.

Section One

The Open Market Shared Equity Scheme

An introduction

1.1 The Open Market Shared Equity Scheme is part of the range of assistance from the Scottish Government under the Low-Cost Initiative for First Time Buyers ('LIFT'). It aims to help people on low to moderate incomes to become home owners where this is sustainable for them. The Scheme helps eligible buyers to buy a home within a certain price threshold that is for sale on the open market. From 1 October 2017 Link Homes will act as administering agent across all administrative areas in Scotland.

1.2 The methodology for providing Open Market Shared Equity is set out in these procedures. The role of the Administering Agents is to act for the Scottish Ministers in the funding of part of the price of a property purchased by an eligible buyer under the scheme. In return, an eligible buyer will enter into a Shared Equity Agreement with the Scottish Ministers which is secured by an appropriately ranked standard security.

1.3 Administering Agents are therefore acting for the Scottish Ministers and, as such, **must** follow these administrative procedures and have due regard to the interests of the Scottish Ministers.

1.4 A central conveyancing contract has been established under the Scottish Government Framework Agreement for the Provision of Legal Services for the Administering Agents operating the Open Market Shared Equity Scheme. Scottish Government Solicitors have been appointed to carry out this work. There is no requirement for Administering Agents to appoint their own solicitors.

Target groups to be housed

1.5 Target groups for the Open Market Shared Equity Scheme must fit the objective of supporting households on low to moderate incomes to become home owners where ownership is affordable and sustainable for them. The Open Market Shared Equity Scheme provides priority access to certain priority groups which include social renters, i.e. people who currently rent from either a Registered Social Landlord or a local authority, serving members of the armed forces, veterans who have left the armed forces within the past two years, widows, widowers and other partners of service personnel who have been killed recently whilst serving in the armed forces, disabled people who are either first time buyers or who own a home that is not suitable to their particular needs, and persons aged 60 and over who demonstrate a housing need to move against the set criteria .

For the purposes of administering this scheme a First Time Buyer (FTB) is defined as:

- A person who does not own nor has previously owned a dwelling in Scotland, the rest of the UK or the rest of the world (All forms of ownership in the legal system of the rest of the UK which are equivalent to ownership in Scotland are treated as ownership)*

*Please note this applies whether title was taken either individually, jointly or in common *pro indiviso* (i.e. where ownership of a dwelling is/was held by two or more parties in individual shares) The definition of what constitutes a First Time Buyer is in line with the definition used for the purposes of Land and Buildings Transaction Tax and is set out in further detail on the [Revenue Scotland Website](#)

Where joint applications are received and one of the applicants is not a first time buyer the application cannot be processed unless the applicants fall into one of the priority target groups set out above.

1.6 Administering Agents must make sure that duties under the (a) Statutory Code of Practice on the Duty to Promote Race Equality in Scotland, (b) Statutory Code of Practice on Racial Equality in Housing: Scotland, and (c) Duty to Promote: Statutory Code of Practice Disability Equality Duty: Statutory Code of Practice: Scotland are met when targeting the Open Market Shared Equity Scheme.

1.7 Non-United Kingdom nationals are eligible for assistance under the Open Market Shared Equity Scheme so long as they do not have a home elsewhere and meet any other eligibility criteria set for the scheme.

Equity stakes

1.8 Applicants who purchase property through the Open Market Shared Equity Scheme generally need to take an equity stake of between 60 and 90 per cent of the value of a property (or purchase price whichever is lower), as set by an independent professionally qualified valuer who is registered with the Royal Institution of Chartered Surveyors (RICS). The Scottish Ministers will keep a financial stake in the property so the applicant does not have to fund all of it. In certain limited circumstances however, the Scottish Government may agree to reduce the minimum equity stake to as low as 51 per cent. This is likely to apply where a housing market is particularly pressured or where people with particular housing needs have identifiable additional housing costs (see Annex C, paragraph 12). In all cases, the maximum initial equity stake that any owner can take is 90 per cent of the value of a property.

1.9 The level of equity stake that the Scottish Ministers will have in a property depends on the level of equity stake taken by an owner. For example, if an owner has an equity stake amounting to 60 per cent of the value of a property, the Scottish Ministers will have a 40 per cent equity stake in the value of that property.

Valuations and Letters of Reliance

Valuations

1.10 Scottish Ministers must be able to rely on the valuation provided in the Home Report or valuation for the purpose of providing financial support through the Open Market Shared Equity Scheme. 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.

1.11 Administering Agents must check the valuation report (which may form part of a Home Report) and ensure that it has been prepared by a surveying firm which is a member of the RICS. The property valuation must have been carried out within the past three months. The Administering Agent is required to check the property valuation against the full purchase price. It should be noted that, in the case of eligible applicants who are aged 60 and over and who do not intend to take out a mortgage to assist with the purchase of the property, a property valuation will still be required. Administering Agents should also note that valuations must only relate to the value of the property itself and not to any contents, moveable items etc.

1.12 Applicants to the Open Market Shared Equity Scheme must be means tested in order to establish eligibility and it should be noted that interest only mortgages are not permissible when purchasing a property with the assistance of Scottish Government Shared Equity. All mortgages must be capital repayment.

1.13 Administering Agents must inform applicants that they are expected to make payment of all sums due to Scottish Government under the Open Market Shared Equity Scheme when they sell their home. Administering Agents should note that the shared equity arrangements between Scottish Ministers and individual shared equity owners will run indefinitely and that owners will not be required to grant a replacement standard security in the nineteenth year after their purchase of their property in order to address the legal implications of the “20 year security rule”. Scottish Government plans to introduce secondary legislation in 2018 to exempt certain shared equity schemes, including the open market shared equity scheme, from the provisions of the ‘20 year security rule’. The standing instructions to purchasers’ solicitors which form part of Annex A include clauses and a template letter bringing this matter to the attention of purchasers and their solicitors.

The responsibilities associated with buying a home

1.14 An applicant will be responsible for their own legal and, if necessary, valuation costs incurred in relation to the purchase, and will be responsible for all tax and registration costs. Unlike shared ownership, an owner will have full title to the property and will not make occupancy payments. Scottish Ministers hold a heritable security over the property which is discharged upon the open market sale of the property or purchase of the remaining equity stake by the shared equity owner.

1.15 An owner is expected to occupy the property as their sole and only residence and they will be responsible for keeping the property in a good and habitable state of repair. As well as making mortgage repayments and paying tax to their local authority, an owner must also insure their property. An owner is responsible for all maintenance, repair and insurance costs and not just a percentage, and if the property has common and shared areas they will be responsible for paying any common maintenance or service charges. The scheme is not available to assist buy-to-let investors and upon completion, the property purchased with assistance from the scheme must be the only residential property owned by the buyer.

1.16 In so far as practicable, Administering Agents should encourage Open Market Shared Equity Scheme applicants to discuss common maintenance and/or service charges with their solicitor to find out how much these additional costs are before they proceed with buying a property.

1.17 An owner is not allowed to let or share possession of the property or any part of it and owners are expected to live in the property as their only place of residence.

1.18 Administering Agents should make sure that applicants are made aware of these obligations (and the associated financial responsibilities) when they apply to the Open Market Shared Equity Scheme. Administering Agents must also recommend to applicants that, in so far as they have not already done so, they appoint solicitors and fully discuss with them the obligations that come with being an owner of a Shared Equity property – and the associated costs – as well as the full terms of the Shared Equity documentation. Reference in this regard may be made to the Application Form - Part 8 Appointing a Solicitor (Annex B). Administering Agents should also recommend that applicants contact an independent financial advisor if they have not already done so.

1.19 The standard styles of legal documentation are set out in **Annex A**.

The golden share

1.20 In certain circumstances, such as in areas where there is a highly constrained supply of affordable housing and little or no scope for this supply to be increased, the Scottish Ministers may be allowed to retain a 10 per cent equity stake in a property, known as a 'golden share'. The golden share will only be used in areas where there are fewest opportunities for supply to be increased – in particular some rural areas. The Scottish Government will agree any areas for operation of the golden share with each local authority, and will communicate these to Administering Agents. The retention of a golden share is secured through the Shared Equity Agreement.

1.21 Where applicable, Administering Agents must (i) explain to applicants what it means to have a 'golden share' over a property and (ii) ensure that individual passport letters record where a golden share will apply (see Annex D).

Financial Conduct Authority (FCA) permits

1.22 Administering Agents must ensure that they have all appropriate licences and authorisations for consumer credit purposes in relation to their role in the administration of OMSE transactions. While Scottish Government cannot provide Administering Agents with advice on which FCA authorisations may be required, the detailed regulations on which activities are regulated by the FCA were amended with effect from 27 June 2014 to provide that “credit broking” is not a regulated activity for which FCA authorisation is required where the broking relates to a secured loan provided by either the Scottish Ministers or an Administering Agent, which means that Administering Agents should not require authorisation for “credit-broking” in relation to OMSE transactions. It is possible, however, that authorisation may still be required for Category F (debt collecting) and/or Category G (debt administration). Administering Agents may wish to consider guidance that has been provided to them by the Scottish Federation of Housing Associations on this particular issue.

Publicity

1.23 Administering Agents should ensure that any publicity material they produce for the Open Market Shared Equity Scheme meets all statutory requirements and is discussed in advance with the trading standards department of the relevant local authority. All publicity material produced by Administering Agents should also make clear that the scheme is funded by the Scottish Government as part of LIFT.

Section Two

Assessing, approving and paying grant

2.1 This section describes the procedures which Administering Agents **must** follow when assessing, approving and paying grant under the Open Market Shared Equity Scheme.

Standard application form

2.2 Administering Agents must issue the standard application form at Annex B to applicants to the scheme. The only amendment that Administering Agents must make to the form before issue is to the areas listed in Part 1, question 1. Individual Administering Agents must make sure that the form they use only specifies the areas where that Administering Agent is administering the Open Market Shared Equity Scheme.

2.3 If incomplete forms are returned, Administering Agents must ask applicants to provide any missing information before the application is assessed. Applicants must be made aware that their application will not be considered until all the necessary information is supplied.

Initial assessment

2.4 Administering Agents **must** use the guidance set out in Annex C to assess the level of resources that an applicant is able to put towards the purchase. Once verified, the 'agreed' level of resources should be expressed as a percentage of the relevant maximum price ceiling for the size of property that the applicant would be entitled to buy in the area of their choice. If the percentage is at or below 90 per cent of the maximum price ceiling, the applicant **may** be entitled to receive a 'passport' to look for a property (see section 2.1 above). Annex D contains the standard form of passport letter that Administering Agents **must** issue to applicants. **The CSV document will contain blank columns pertaining to information in Part A of the Sales Log Form that agents are required to complete. Due to data protection rules, the CSV document will not contain names of applicants and therefore Administering Agents will need the unique reference number provided in the passport letter to identify who the applicant is.**

2.5 If an eligible buyer has a Help to Buy: ISA (which is a UK Government scheme) they may be able to use the proceeds of the ISA as a deposit towards the purchase price of a home purchased under the Scottish Government open market shared equity scheme. The eligible buyer's solicitor is required to register with the UK Government in accordance with the rules of the Help to Buy: ISA scheme before they can apply for the release of funds on behalf of their client. Further information on these matters is provided in the Standing Instructions to Solicitors which form part of the legal documentation contained in Annex A, and more information on the Help to Buy: ISA scheme can be found at <http://www.helptobuy.gov.uk/home>. Help to Buy: ISAs are only available to first-time buyers and not second steppers.

Passport letter

2.6 The passport letter gives applicants 12 weeks from the date of issue to search for a property and to have an offer to purchase accepted. However the date of entry can be a later date subject to entry being taken before the end of each current financial year.

2.7 The passport letter must clearly record the size of property that an applicant can search for. Applicants will not be allowed to buy a home which is more than one apartment size larger than their current need¹, unless there are exceptional reasons. Applicants will not be allowed to buy a larger home even if the value of the property is within the threshold prices set out in their passport letter. This means that ordinarily a single person household will be entitled to buy a three apartment property, as will a couple. A three person household will be entitled to buy a four apartment property, a four person household a five apartment property and so on. Flexibility on apartment size may be offered to single parents with dependent children.

2.8 In the case of someone with particular housing needs arising from a disability, written evidence should be provided to the Administering Agent for further consideration to help support any request for a larger home than the scheme permits. In the case of family breakdown, the number of people in the household **may** include children who only spend part of the time in the property due to parental **equal shared care**. Evidence would need to be provided, however, to demonstrate the need for larger accommodation in such cases.

2.9 Administering Agents can provide flexibility on the size of a property a person is eligible to buy and allow them to purchase a property that is one size less than what they have been assessed as eligible to buy. In the first instance, administering agents should check with the applicant's independent financial advisor to ensure they are borrowing the maximum level that their lender is willing to provide. Flexibility will depend on the specific circumstances in each case. Where there are two children expected to share a room, this is not permitted where they are of a different sex unless both of them are under 10 years old.

2.10 The passport letter must also record the price of property that an applicant can search for in their area of choice. Maximum price ceilings for 2 apartment to 6 apartment properties in different areas are published on the Scottish Government's website and will be updated as necessary. Applicants cannot buy a property that costs more than the published maximum price ceiling for their needs in the area in which they wish to buy. If an applicant is eligible to buy a 7/8/9 apartment property, the maximum threshold price for a 6 apartment will apply. The only exception to this is in the case of priority groups or applicants with particular housing needs arising from disability where additional flexibility can be applied to the price of properties that can be purchased, subject to relevant evidence.

¹ An apartment is classified as any habitable room, but does not include kitchens, bathrooms, box rooms, utility rooms or hallways. Glass conservatories do not qualify as an apartment

2.11 Administering Agents must ensure that each passport letter they issue is recorded in their standard monthly report to the Scottish Government (see section 3).

Property check

2.12 If an applicant finds a property, the Administering Agent **must**:

- check that it is within their area of operation and whether the golden share will apply;
- check the schedule of sale to see if the size of the property is within the guidelines set out above and, if this is the case, check that the independent valuation, whether under a Home Report² or where necessary under a valuation obtained by the purchaser from an independent professionally qualified valuer who is registered with the RICS, is within the relevant maximum price ceiling;
- check that the requirements of the grant offer in connection with the valuation are met in every case.
- check the level of financial contribution that the applicant can put towards the purchase (against the criteria set out in Annex C); and
- check that the level of equity stake that the applicant can afford is within acceptable limits – normally between 60 per cent to 90 per cent of the valuation for Open Market Shared Equity.

Property purchase

2.13 If the application complies with the above criteria, the Administering Agent should let the applicant know that they can proceed to instruct their solicitor to issue a formal offer to purchase. At the same time, the Administering Agent should liaise with Scottish Government Solicitors in terms of template correspondence to ensure that the matter progresses in an orderly manner. The sales log form should at that time be e-mailed directly to the buyer's solicitor who should ensure that the buyer completes it and notifies when this has been done.

2.14 The instruction letter which the Administering Agent issues to the applicant records the amount of grant which the Scottish Ministers will be contributing towards the purchase price, and the corresponding equity stake that the Scottish Ministers will have in the property.

2.15 Annex C shows how these sums **must** be calculated and the methodology set out therein must be followed for each purchase through the Open Market Shared Equity Scheme.

² Sellers do not need to provide a Home Report if their property is classified as either 'new housing' or 'newly converted premises'. **New housing** includes homes that may be sold 'off-plan' to the first purchaser or sold to the first occupier. And **newly converted premises** means a property which is being, or has been, converted to a home if it has not previously been used in its converted state.

Standard styles of legal documentation

2.16 Annex A contains the standard styles of legal documentation that **must** be used when operating the Open Market Shared Equity Scheme. These are:

- Standing Instructions that Administering Agents **must** complete and send to solicitors acting for applicants;
- A copy sales log form. 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 must provide a web link to the Sales Log Form to the purchaser's solicitor who must ensure that Part B of the form is completed by the buyer.
- Minutes of Agreement ('Shared Equity Agreement') – these documents set out the basic arrangement between the owner and the Scottish Ministers. There are two versions - one where the Scottish Ministers are **not** retaining a Golden Share and one where they are;
- A Standard Security – this document sets out the legal right to enforce the Shared Equity Agreement by re-possessing the property if the owner is in default; and
- A Ranking Agreement – this document sets out the relationship between the owner, the Scottish Ministers and the primary lender who has a security over the property.

2.17 Following discussions with the Law Society of Scotland, it has been agreed that applicants and Scottish Ministers should be separately advised in connection with the Shared Equity Agreement, the Ranking Agreement, and the form of the Standard Security. However, in order to avoid unnecessary duplication of legal work, the applicant's solicitor will be asked to carry out all necessary title and property due diligence on the Scottish Ministers' behalf. Annex A therefore contains standing instructions to solicitors acting for applicants in connection with the completion of the Standard Security in favour of the Scottish Ministers together with style certificate of title to be provided. Administering Agents should ensure that any matters reported to them by the purchaser's solicitors are appropriately and properly dealt with having regard to the terms of paragraphs 51 and 52 of the Standing Instructions. This includes ensuring that the matter has been reported in similar terms to the primary lender. **Settlement must not take place unless the certificate of title has been received by the Administering Agent.**

2.18 Authorised officials of the Scottish Government More Homes Division must sign **every** Minute of Agreement and Ranking Agreement on behalf of the Scottish Ministers. This will be dealt with by Scottish Government Solicitors who will liaise with Administering Agents as required.

2.19 The standing instructions to solicitors acting for applicants set out provisions for the payment of fees (paragraph 54 of the standing instructions). The applicant's

solicitor must attend to the registration of the Standard Security and Ranking Agreement whilst Scottish Government Solicitors will deal with the registration of the Shared Equity Agreement in the Books of Council and Session.

Grant payment - Administering agents

2.20 Processing of payment claims in HARP will work as follows:-

- The **Applicant Finance Inputter** will enter transactions eligible for payment on a claim spreadsheet. This spreadsheet will perform various checks such as ensuring postcodes are in upper case. Once complete the applicant will click on the 'create CSV file' button on the spreadsheet. This file should then be uploaded to the HARP system and forwarded for internal authorisation.
- The **Applicant Finance Approver** will check the claim and, if satisfied, will authorise the claim or reject it. The approver may add comments, as appropriate, for the SG Finance team.
- The **SG housing finance team** will check the claim and all relevant back up documents and either accept or reject the claim.
- If the claim is accepted it will be processed for payment and marked paid, if rejected it will be returned to the applicant for a rework

2.21 In the event of a purchase failing, or if a change occurs to the data as submitted, then the following procedure applies:-

- The **Applicant Finance Approver** creates a change request, adding supporting documentation as required.
- The SG housing finance team will review the request and either approve or reject it, adding comments as necessary. If the change is for a failed sale then a sales invoice will be sent out.

2.22 The SG will record settled sales in HARP that are notified from their solicitors. This will feed into a standard report in the HARP system indicating which properties have not settled within 14 days of the payment of grant..

2.23 Administering Agents should note that it is not necessary for them to wait until the applicant's solicitors have submitted their Certificate of Title before the payment claim is submitted by the Administering Agents to the Scottish Government. Administering Agents should be aiming to submit their payment claims on HARP at the earliest opportunity in advance of the anticipated completion date to ensure that the funds will be released by Scottish Government and made available in time for the proposed settlement date, having regard to the timescales which apply within Scottish Government for processing and making payments.

2.24 Release of funds to the applicant's solicitor must not take place unless (1) the Certificate of Title has been received and (2) the Administering Agent has received confirmation from Harper Macleod that all necessary documents are satisfactorily in place. The Administering Agent will agree with the purchaser's solicitors a settlement date.

2.25 Administering Agents will be asked to provide a quarterly report containing a summary of the completed sales log forms.

Settlement

2.26 The Administering Agent must ensure that the property purchase is recorded in its monthly report to the Scottish Government (see section 3).

2.27 The Administering Agent must ensure that every applicant who purchases a home with assistance from the scheme is provided with a copy of the LIFT – Post Sale Question and Answer leaflet.

Data Protection

2.28 Administering Agents act as a data processor in relation to shared equity applications. Further detailed information is contained in the [Shared Equity Privacy Notice](#) The retention periods for information processed by Administering Agents on behalf of Scottish Government are as follows:

- **Application Information and supporting documentation** (i.e. forms, wage slips, Key Facts form lenders) – This should be held for the remainder of the calendar year within which the information was received plus an additional 12 months
- **Sales Log forms** – This information should now be sent directly to our Analytical Services colleagues (joseph.jobling@gov.scot). This data should be held for 5 years following the end of the calendar year in which it was received.
- **Shared Equity Owner and Property Purchase Information where Scottish Ministers hold an equity stake** – This information should be held indefinitely until ministers securities are discharged and for the remainder of the calendar year plus a further 6 years subsequent to discharge for audit purposes
- **Non-anonymised Customer Satisfaction Survey and Testimonials** - The information should be destroyed within 12 months after the end of the calendar year the information was received, unless the individual has given express permission for it to be used in publicity materials.

2.29 All shared equity information stored by Administering Agents on behalf of the Scottish Government must be stored in electronic form.

Section Three

Monthly report

3.1 The Scottish Government monitors how the Open Market Shared Equity Scheme is progressing. Administering Agents must therefore submit a monthly report to the relevant Scottish Government's Housing Markets Team **by the second day of every month**. The report must cover the items shown in Annex E and must be compiled on a cumulative basis each financial year. For example, a report submitted by 2 March 2012 must include information from 1 April 2011 to 28 February 2012 inclusive. **When preparing the monthly report Administering agents should be aware that the number of live passports, sales to date and expired passports should equal the total number of passports issued.**

Section Four

Post Sale Duties for Administering Agents

4.1 The Scottish Government has prepared Guidance in relation to information on [After Sale Shared Equity Procedures](#) for use by Administering Agents.

4.2 Every five years after settlement of a shared equity transaction for as long as Scottish Government retains an equity stake in a property, Administering Agents should send a copy letter (the content of which is set out in the ASSEP Procedures) to a shared equity owner which will advise them to consider purchasing additional equity.

Annex A

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.

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 includes:-

- 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); 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 will be expressed as a percentage of the initial purchase price 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 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.

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 ***[insert details of Administering Agent or its subsidiary. If subsidiary substitute subsidiary's details for Administering Agent's details throughout]***.

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.

23.3 The Shared Equity Agreement will subsist for an indeterminate period of time and so the Standard Security to be granted by your client in favour of the Scottish Ministers is potentially capable of being redeemed by your client pursuant to section 11 of the Land Tenure Reform (Scotland) Act 1974 (often referred to as the “20-year security rule”). The Scottish Government has proposed an amendment to the 20 year security rule pursuant to the Housing (Scotland) Act 2014. The amendment will aim to remove the right to redeem securities after 20 years for those participating in designated schemes including the open market shared equity scheme. You must therefore inform your client of this by sending to them a copy of the pro-forma notice which forms Appendix 2 to these Instructions, duly addressed to your client, and provide [*Insert name of Administering Agent*] with a copy of the notice to your client when submitting the certificate of title.

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 CML 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 must report the matter to us.

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 incumbrances 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 Regulations 2007. For the avoidance of doubt Scottish Ministers are relying on such compliance in terms of Section 17 of the Money Laundering Regulations 2007.

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. Microfiche 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

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 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

APPENDIX 2

NOTICE RELATING TO SECTION 11 OF THE LAND TENURE REFORM (SCOTLAND) ACT 1974

To be addressed to the Purchaser

Dear [Insert name(s) of Purchaser]

**Scottish Government LIFT Scheme
Purchase of [Insert address of the Property]
Section 11 of the Land Tenure Reform (Scotland) Act 1974**

It is a condition of the Purchaser receiving financial support from Scottish Ministers under the LIFT Scheme for the purchase of the Property that the Purchaser must grant in favour of Scottish Ministers a Standard Security over the Property. Because the financial support given by Scottish Ministers will subsist for an indeterminate period of time, the Standard Security to be granted by the Purchaser in favour of the Scottish Ministers is potentially capable of being redeemed by the Purchaser pursuant to section 11 of the Land Tenure Reform (Scotland) Act 1974 (often referred to as the “20-year security rule”).

The Scottish Government has introduced an amendment to the 20 year security rule pursuant to the Housing (Scotland) Act 2014. The amendment will provide Scottish Ministers with a power to remove the right to redeem securities after 20 years for those participating in designated schemes including the Help to Buy (Scotland) Affordable New Build shared equity scheme. Secondary legislation will be introduced in 2018 . Accordingly, the purpose of this letter is to make the Purchaser aware of this and to make clear that the Purchaser should not enter into the shared equity documentation on the assumption that, after 20 years, the Purchaser will be able to rely on section 11 of the 1974 Act as that section currently applies.

AGREEMENT

between

THE SCOTTISH MINISTERS

and

[Shared Equity Owner]

NO GOLDEN SHARE

CLAUSES

1. [Definitions](#)
2. [Obligation to Pay](#)
3. [Tranching Up](#)
4. [Expenses](#)
5. [Certificates and Determinations](#)
6. [Interest and Losses](#)
7. [Land Tenure Reform \(Scotland\) Act 1974](#)
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 <i>[here insert the date of entry under the contract for sale]</i> ;

<p>“Deemed Open Market Value”</p>	<p>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;</p>
<p>“Encumbrance”</p>	<p>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;</p>
<p>“Home Report”</p>	<p>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;</p>
<p>“New Proportion”</p>	<p>has the meaning ascribed to it in clause 3;</p>
<p>“New Security”</p>	<p>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;</p>
<p>“Open Market Conditions”</p>	<p>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</p>

	<p>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;</p>
<p>“Open Market Sale”</p>	<p>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;</p>
<p>“Open Market Shared Equity Scheme”</p>	<p>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;</p>
<p>“Open Market Value Assumptions”</p>	<p>means the following assumptions:</p> <ol style="list-style-type: none"> 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;

	<p>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;</p> <p>4. that the Shared Equity Owner has complied with the obligations incumbent upon him in terms of the Standard Security;</p> <p>5. that there is no Encumbrance affecting the Property;</p> <p>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</p> <p>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;</p>
"Parties"	means the parties to this Agreement;
"Payment Event"	<p>means any one or more of the following events:</p> <p>(a) an Open Market Sale other than to a Spouse;</p> <p>(b) any transfer or transmission of the</p>

	<p>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;</p> <p>(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;</p> <p>(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;</p> <p>(e) (If the Shared Equity Owner comprises more than one person) the death of the survivor of such persons;</p> <p>(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;</p> <p>(g) The Shared Equity Owner or any</p>
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	<p>Spouse of the Shared Equity Owner granting a New Security without first obtaining the written consent of Scottish Ministers;</p> <p>(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;</p> <p>(i) Any default under the Standard Security;</p> <p>(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</p> <p>(k) the Shared Equity Owner becomes the proprietor of another dwelling house in addition to the Property</p>
<p>“Property”</p>	<p>means the whole of the property at [FULL POSTAL ADDRESS INCLUDING POSTCODE MUST BE INSERTED HERE];</p>
<p>“Ranking Agreement”</p>	<p>means the agreement regulating the ranking of standard securities between Scottish Ministers, the Shared Equity</p>

	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% (ie 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. Land Tenure Reform (Scotland) Act 1974

- 7.1 Subject always to the provisions of section 11 of the Land Tenure Reform (Scotland) Act 1974 the Shared Equity Owner shall not be entitled to redeem the Standard Security.

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:

<p>SUBSCRIBED by the Shared Equity Owner at</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p>	<p>..... (Signature)</p> <p>..... (Signature)</p>
<p>SUBSCRIBED for and on behalf of Scottish Ministers by</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p>	<p>..... (Signature)</p> <p>Authorised signatory</p> <p>..... (Full Name)</p>

AGREEMENT

between

THE SCOTTISH MINISTERS

and

[Shared Equity Owner]

GOLDEN SHARE

CLAUSES

1. [Definitions](#)
2. [Obligation to Pay](#)
3. [Tranching Up](#)
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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 <i>[here insert the date of entry under the contract for sale];</i>

<p>“Deemed Open Market Value”</p>	<p>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;</p>
<p>“Encumbrance”</p>	<p>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;</p>
<p>“Home Report”</p>	<p>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;</p>
<p>“New Proportion”</p>	<p>has the meaning ascribed to it in clause 3;</p>
<p>“New Security”</p>	<p>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;</p>

<p>“Open Market Conditions”</p>	<p>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;</p>
<p>“Open Market Shared Equity Scheme”</p>	<p>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;</p>
<p>“Open Market Sale”</p>	<p>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;</p>
<p>“Open Market Value Assumptions”</p>	<p>means the following assumptions:</p> <ol style="list-style-type: none"> 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;

	<p>2 that vacant possession of the Property is available;</p> <p>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;</p> <p>4 that the Shared Equity Owner has complied with the obligations incumbent upon him in terms of the Standard Security;</p> <p>5 that there is no Encumbrance affecting the Property;</p> <p>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</p> <p>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;</p>
"Parties"	means the parties to this Agreement;
"Payment Event"	means any one or more of the

	<p>following events:</p> <p>(a) an Open Market Sale other than to a Spouse;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(e) (If the Shared Equity Owner comprises more than one person) the death of the survivor of such persons;</p>
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	<p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(i) Any default under the Standard Security;</p> <p>(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</p> <p>(k) the shared equity owner becomes</p>
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	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 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% (ie 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 x (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. Land Tenure Reform (Scotland) Act 1974

- 8.1 Subject always to the provisions of section 11 of the Land Tenure Reform (Scotland) Act 1974 the Shared Equity Owner shall not be entitled to redeem the Standard Security.

9. Transfer

- 9.1 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.

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

9.3 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

10. Notices

10.1 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.

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

11. 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.

12. 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.

13. 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:

<p>SUBSCRIBED by the Shared Equity Owner at</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p>	<p>..... (Signature)</p> <p>..... (Signature)</p>
<p>SUBSCRIBED for and on behalf of Scottish Ministers by</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p>	<p>..... (Signature) Authorised signatory</p> <p>..... (Full Name)</p>

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:

1. 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.

1.3 The Owner agrees for the benefit of the Primary Lender only that he shall not exercise any right he may have or which may accrue to him under Section 11 of the Land Tenure Reform (Scotland) Act 1974 with respect to the Postponed Fixed Security at any time prior to the Primary Lender Priority Debt Discharge Date.

2. 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.

3. 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.

4. **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.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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.

11. 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 “Primary Lender Priority Debt Discharge Date” means the date on which the Primary Lender Priority Debt has been repaid or otherwise discharged in full;
- 11.5 ‘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;
- 11.6 ‘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;
- 11.7 ‘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** ;
- 11.8 ‘Securities’ means the Primary Lender Fixed Security and the Postponed Fixed Security;
- 11.9 ‘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;

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

11.11 References to:

- 11.11.1 statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force;
- 11.11.2 'including' shall not be construed as limiting the generality of the words preceding it;
- 11.11.3 words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 11.11.4 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;
- 11.11.5 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;

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

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

11.12 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.

12. **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.

13. **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.

14. **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.

15. **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:

<p>SUBSCRIBED for and on behalf of the Primary Lender by its duly authorised signatory at</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p>	<p>..... (Signature)</p> <p>..... (Full Name)</p>
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<p>SUBSCRIBED by the Owner at</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p> <p>..... Occupation</p>	<p>..... (Signature)</p> <p>..... (Signature)</p>
<p>SUBSCRIBED for and on behalf of the Scottish Ministers by</p> <p>on the day of (Year-figure)</p> <p>in the presence of:</p> <p>..... Witness (Signature)</p> <p>..... Full Name</p> <p>..... Address</p> <p>.....</p> <p>..... Occupation</p>	<p>..... (Signature)</p> <p>..... (Full Name)</p>

Annex B

Application form

(to be produced on the Administering Agent's (or subsidiary's) letter headed notepaper)

Please read the guidance notes for applicants before completing the application form.

Part one – About the application

1. Please tell us where you would like to look for a property by ticking the name of the area/s you are interested in:

Please tick

Local Authority	Local areas	
City of Edinburgh	City of Edinburgh	
East Lothian	East Lothian	
Midlothian	Midlothian	
West Lothian	West Lothian	
Angus	Angus	
Clackmannanshire	Clackmannanshire	
Dundee	Dundee	
Falkirk	Falkirk	
Fife	Fife	
Perth & Kinross	Perth & Kinross	
Scottish Borders	Scottish Borders	
Stirling	Rural Stirling	
	Urban Regeneration Companies - Raploch	
	Urban Stirling	
Local Authority	Local areas	
Aberdeen City	Aberdeen City	
Aberdeenshire	Central Aberdeenshire	
	North Aberdeenshire	
	South Aberdeenshire	
Eilean Siar	Eilean Siar	
Highland	Highland	
Moray	Moray	
Orkney Islands	Orkney Islands	
Shetland Islands	Shetland Islands	

Local Authority	Local areas	
Argyll & Bute	Argyll & Bute	
City of Glasgow	City of Glasgow	
Dumfries & Galloway	Dumfries & Galloway	
East Ayrshire	East Ayrshire	
East Dunbartonshire	East Dunbartonshire	
East Renfrewshire	East Renfrewshire	
Inverclyde	Inverclyde	
North Ayrshire	Arran	
	North Ayrshire	
North Lanarkshire	North Lanarkshire	
Renfrewshire	Renfrewshire	
South Ayrshire	South Ayrshire	
South Lanarkshire	South Lanarkshire	
West Dunbartonshire	West Dunbartonshire	

2. How many people are applying to the Open Market Shared Equity Scheme (applicants are all those who wish to be named as the owner of the property)?

—

3. Please give details of all applicants:

First applicant:	Second applicant:
Surname:	Surname:
First names:	First names:
Current address:	Current address:
Postcode (in full):	Postcode (in full):
Telephone numbers: Home Work Mobile	Telephone numbers: Home Work Mobile
Email address:	Email address:
Date of birth:	Date of birth:
Relationship to other applicant:	Relationship to other applicant:

(If there are more than two applicants please use the space provided at the end of the form to tell us about the other people applying.)

Part two – Enclosures

Please tick
(if provided)

- 1. Written evidence of your current accommodation status. _____
- 2. In the case of existing home owners with particular needs, written evidence supporting your need to move. _____
- 3. Written evidence of a Decision in Principle and 1 Key Fact Illustration from a lender _____

Part three – About you

First applicant

- 1. Are you a first-time buyer? Yes / No
- 2. Are you currently employed or in receipt of an employment offer in the area where you would like to buy a property? Yes / No

If yes, please tell us about your employment.

Employer's name:
Employer's address:
Type of employment:

- 3. Are you currently self-employed? Yes / No

If yes, please tell us about the kind of business you operate.

Company name:
Company address:
Type of company:
Occupation:

4. Is this application in respect of your intended primary and only residence?

Yes / No

5. Have you left the Armed Forces in the past two years?

Yes / No

6. Are you aged 60 or over and applying to purchase without a mortgage?

Yes/No

Second applicant

7. Are you a first-time buyer?

Yes / No

8. Are you currently employed or in receipt of an employment offer in the area where you would like to buy a property?

Yes / No

If yes, please tell us about your employment.

Employer's name:

Employer's address:

Type of employment:

9. Are you currently self-employed?

Yes / No

If yes, please tell us about the kind of business you operate.

Company name:

Company address:

Type of company:

Occupation:

10. Is this application in respect of your intended primary and only residence?

Yes / No

11. Are you currently renting a home from a housing association or local authority, a serving member of the armed forces, an armed forces veteran who has left within the past two years or a partner of a member of the armed forces who has lost their life in the past two years?

Yes / No

12. Please tell us if you own a home elsewhere (for example in another country)

Yes / No

(If there are more than two applicants please use the space provided at the end of the form to tell us about the other people applying.)

Part four – Details of those who will be living with you

1. Please tell us about the other people who will be living with you:

Surname	First name(s)	Date of birth	Relationship to applicant(s)	Occupation (if applicable)

Part five – Current accommodation

First applicant

1. How would you describe your current living arrangements?

Please tick

Home owner	
Local authority tenant	
Registered Social Landlord (normally a housing association or housing co-operative) tenant	
Private rented tenant (unfurnished accommodation)	
Private rented tenant (furnished accommodation)	
Lodger	
Living with parents/ relatives	
Tied accommodation (Armed Forces)	
Tied accommodation (non Armed Forces)	
Other (please state):	

2. If you are a tenant, lodger or living in tied accommodation please give the name and address of your landlord or letting agent:

Name: Address:

3. Are you on a local authority or Registered Social Landlord waiting list? If so, which?

Name of local authority/ Registered Social Landlord	How long have you been on the waiting list?

4. Please explain why you want to move from the house you currently live in:

Please include Enclosure One – Evidence of accommodation status

Second applicant

5. How would you describe your current living arrangements?

	Please tick
Home owner	
Local authority tenant	
Registered Social Landlord (normally a housing association or housing co-operative) tenant	
Private rented tenant (unfurnished accommodation)	
Private rented tenant (furnished accommodation)	
Lodger	
Living with parents/ relatives	
Tied accommodation (Armed Forces)	
Tied accommodation (non Armed Forces)	
Other (please state):	

6. If you are a tenant, lodger or living in tied accommodation please give the name and address of your landlord or letting agent:

Name: Address:

7. Are you on a local authority or Registered Social Landlord waiting list? If so, which?

Name of local authority/ Registered Social Landlord	How long have you been on the waiting list?

8. Please explain why you want to move from the house you currently live in:

--

Please include Enclosure One – Evidence of accommodation status

Part six – People with particular housing needs

1. Do you or any member of your household have a disability or learning difficulty we should take into account?

Yes / No

If no, please go to Part seven.

2. Does this affect the type/ size/ design of property that you can live in?

Yes / No

If yes, please provide us with more information, for example, need full wheelchair access internally; need all electric power:

--

3. If you or someone in your household has a disability or learning difficulty and you currently own your home, please confirm you have provided written support from a professional (such as a doctor or occupational therapist) stating that your current property is not suitable for your needs?

Yes / No

Please include Enclosure Two – written support stating why you have to move from the house that you own.

Part seven – Income assessment

1. Gross earnings (per annum):

First applicant	£
Second applicant	£
Other applicants	£
Total earnings	£

2. Please specify any other income per annum:

Sickness benefits	£
Unemployment benefits	£
Bank interest	£
Superannuation or pension from previous employment	£
Working families tax credit	£
Widow's pension	£
Shareholder's profits	£
Other (please specify):	£
	£
	£

3. Please specify total personal contributions held:

First applicant	£
Second applicant	£
Other applicants	£
Total personal contributions	£

4. Do any members of the household currently own their home?

Yes / No

If yes, how much equity do they expect to release from the sale of the property (that is the difference between the expected sale price and any loans secured over the property)?

£

5. Have any members of the household previously owned a home?

Yes / No

If yes, what profit did they make from the sale of this property?

£

6. Which lenders have you contacted regarding a mortgage for a property (if applicable) to be purchased through the Open Market Shared Equity Scheme?

Please note that you are normally required to provide one Decision in Principle and one Key Facts Illustration from a lender. Where this is not possible, there should be clear justification of the reasons (see Question 8). These must be from a qualifying lender such as a bank, building society, credit union or insurance company. Other lenders may be acceptable but you will need to check first with us whether the lender can provide a mortgage for the Open Market Shared Equity Scheme. You may wish to consult an independent financial adviser if you have not done so already.

You should be able to obtain one Decision in Principle and one Key Facts Illustration that do not involve a credit search. Searches can leave 'footprints' on your credit history which may affect your ability to obtain credit. You should therefore confirm with the lender whether the Decision in Principle or Key Facts Illustration will include any form of credit search. If the Decision in Principle and/or Key Facts Illustration does require a credit search the lender should explain to you any potential consequences. The lender should also obtain your consent before carrying out the search.

Lender 1

Name:

Address:

Lender 2

Name:

Address:

Lender 3

Name:

Address:

7. What is the maximum value of the mortgage (if applicable) that you have been told you are entitled to?

£

8. Do you have written confirmation in the form of a Decision in Principle and a Key Facts Illustration (if applicable)?

Yes / No

If no, please tell us why you have not been able to obtain these.

Please include Enclosure Three – Written evidence of the Decision in Principle and a Key Facts Illustration (unless you are aged 60 or over and wish to purchase without a mortgage).

9. If you are aged 60 or over and purchasing without a mortgage, what sale price did you, or do you expect to, achieve for your previous property?

£

Part eight – Solicitors who will be acting for you

1. Which firm of solicitors have you contacted to act for you in the purchase of a property?

Name:

Address:

Partner responsible:

Please note that if you have not already appointed a solicitor you should do so as soon as possible. You should make sure that they pass on their details to us as soon as they are appointed (see 'Notes for applicants').

Part nine – Use of Information

For purchasers:

You can access a copy of the Scottish Government's Shared Equity Scheme Privacy Notice at <https://beta.gov.scot/publications/shared-equity-schemes-privacy-notice/>

This privacy notice illustrates how your personal information will be used by the Scottish Government in relation to the operation of its shared equity schemes and explains your rights under the General Data Protection Regulation (EU) 2016/679 and how to exercise these rights.

Part ten – Signing the application form

For joint applications both signatures are required.

I/ We confirm that I/ we would like to be considered for the Open Market Shared Equity Scheme and that I/ we have fully considered the requirements of the scheme.

I/We confirm that we have read and understood the Scottish Government's [Privacy Notice](#) for the shared equity schemes.

I/ We confirm that the information provided in this application form is to the best of my/ our knowledge and belief correct and accurate in all respects.

I/ We understand that you and the Scottish Government reserve the right to withdraw from any agreement with me/ us in the event that the information provided proves to have been false or misleading and that it is a criminal offence to knowingly or recklessly make a false declaration or withhold information reasonably required in connection with the application.

Signatory 1: Print name (including Mr/Mrs/Ms/Miss):
 Signature 1:
 Date:

Signatory 2: Print name (including Mr/Mrs/Ms/Miss):
 Signature 2:
 Date:

All applicants must sign this form **twice** – once here and once in the next section. The signature in the next section allows us to request information from the lender that has offered you a mortgage.

We may contact you after we have received the application form to ask you to sign letters giving us permission to contact other organisations mentioned in this form.

Application form for the Open Market Shared Equity Scheme

Notes for applicants

Please complete the application form using **BLOCK CAPITALS**.

Part one – About the application

Please tell us where you would like to look for a property.

Please also complete all your personal details and include a telephone number which would be useful if we need to clarify any details.

Part two – Enclosures

These are additional documents which must be provided where necessary in order to consider your application.

Enclosure one – Evidence of your accommodation status is required. For example, if you are a tenant, a copy of your tenancy agreement should be provided. You must provide written evidence of the accommodation status of **all** applicants regardless of whether they currently live in the same accommodation or live separately.

Enclosure two – If you are a person with particular needs and you currently own your home but need to move, you must provide evidence of why this is the case. For example, if you have particular housing needs arising from an impairment or disability and need to move you must provide written evidence from a professional (such as a doctor or occupational therapist) stating why your current home is unsuitable.

Enclosure three – You are normally required to provide one Decision in Principle and one Key Facts Illustration from a lender(s). Where this is not possible, there should be clear justification of the reasons. These must be from a qualifying lender such as a bank, building society, credit union or insurance company. Other lenders may be acceptable but you will need to check first with us whether the lender can provide a mortgage for the Open Market Shared Equity Scheme.

You are required to provide one Decision in Principle and one Key Facts Illustration (unless you are aged 60 or over and wish to purchase without a mortgage). Searches can leave ‘footprints’ on your credit history which may affect your ability to obtain credit. You should therefore confirm with the lender whether the Decision in Principle and Key Facts Illustration will include any form of credit search. If either of them does require a credit search the lender should explain

to you any potential consequences. The lender should also obtain your consent before carrying out the search.

Part three – About you

This part tells us whether you are a first-time buyer and gives us information about your current employment status. It also asks you to confirm:

- whether your application is in respect of your primary and only residence;
- whether you have left the Armed Forces in the past two years; and

This section should be completed for all applicants.

Part four – Details of those who will be living with you

This is to help us assess your house size requirements. Please give details of all those who will be living with you.

Part five – Current accommodation

Please give us details of your current living arrangements.

This section should be completed for all applicants. You must therefore provide written evidence of the accommodation status of **all** applicants regardless of whether they currently live in the same accommodation or live separately.

Please give us the details of your landlord, if applicable, and any housing waiting lists that you are currently on.

Please explain why you want to move from your current accommodation.

Please provide Enclosure one – Evidence of accommodation status.

If applicable, please also provide Enclosure two – Evidence of why you have to move from the house that you own. For those aged 60 or over is the reason any of the following

- *Under occupation – are you living in property which is too large and need to downsize?*
- *Is your current property no longer suitable to meet your needs – can no longer manage the stairs etc?*
- *Support – do you need to move closer to family or friends that provide care and support?*
- *Are you are living in private rented accommodation?*

Part six – People with particular housing needs

We use the term 'people with particular housing needs' to describe people who have a need for a more expensive, larger or more specialised house. This need could arise as a result of a member of the household having a disability or impairment.

This section relates to information about any particular housing need that you or a member of your household has. Please give as much detail as possible about any special housing requirements that you have in relation to house type, size, design and location.

For those aged 60 or over do any of the following apply:

- Under occupation – are you living in property which is too large and need to downsize?
- Is your current property no longer suitable to meet your needs – can no longer manage the stairs etc?
- Support – do you need to move closer to family or friends that provide care and support?
- Are you living in private rented accommodation?

If you currently own your home but require a property which is more expensive as a result of your particular housing needs we will need to know the specific reasons for this. We need written support from a professional (such as a doctor or occupational therapist) stating why your current house is no longer suitable for your needs (*Enclosure two*).

Part seven – Income assessment

We need as much information as possible relating to your financial situation. We cannot assess your application unless you fully complete this section.

You will have to state all sources of finance. Your funds will be considered to be the total of:

- gross earnings, per single person or couple, as appropriate;
- any other income, comprising sickness benefit, unemployment benefit, bank interest, superannuation or pension from previous employment, working families tax credit, widow's pension and shareholder's profits; and
- personal contributions.

Personal contributions may comprise savings, gifts or any other financial contributions you can make. The definition of personal savings that we use includes: cash; premium bonds; stocks and shares; unit trusts; bank or building society accounts and fixed-term investments; the surrender value of any endowment policies; property; redundancy payments; and pension lump sum payments. In the case of applicants aged 60 or over this would also include the free proceeds from the sale of your current property.

We will include personal contributions held by all prospective applicants.

You may retain £5,000 of any personal contributions held. Above this amount, 90 per cent of the balance will be treated as a contribution towards the purchase of a property.

If you already own a home you may still apply. However, any capital gain on your last owned property will be included as a personal contribution. You must tell us about the profit, or anticipated profit, from the sale of the property. *The information must be validated by a solicitor if the application proceeds to the next stage.*

You must purchase the maximum level of equity you can afford, taking into account other financial commitments and the associated costs of home ownership.

Please include Enclosure Three – Evidence of the maximum mortgage that you are able to raise.

Part eight – Appointing a solicitor

You should appoint a solicitor to act on your behalf to complete the work involved in buying a home as soon as possible if you have not already done so. You should ask them to notify us directly so that we can put them in contact with Scottish Government Solicitors.

Your mortgage provider or independent financial adviser may be able to recommend certain legal firms having regard to matters such as cost, experience and quality of service.

YOU SHOULD ENSURE THAT YOUR SOLICITOR ADVISES YOU ON THE IMPLICATIONS OF THE OPEN MARKET SHARED EQUITY SCHEME AND THE TERMS OF ALL DOCUMENTATION AND THAT YOU ARE SATISFIED WITH THE SAME BEFORE AGREEING TO ENTER INTO ANY LEGAL COMMITMENTS.

The shared equity arrangements will include the granting of a mortgage (or 'standard security' as it is known in Scotland) to secure the rights of the Scottish Government. **YOU SHOULD CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME, OR IF YOU WANT YOUR FAMILY TO INHERIT IT.**

If you have not done so already, we recommend you contact an independent financial advisor to discuss buying a home.

Part nine – Use of information

This part sets out how information provided by you may be used and shared with others and advises you of your rights to obtain a copy of the information held and to request correction.

Part ten – Signing the application form

Please ensure that all applicants sign the application form. Each applicant must sign the form twice – here and in the next section.

Part eleven – Allowing us to request and share information

The signatures in this section allow us to request information from the lenders that have given you the Decision in Principle and Key Facts Illustration

Annex C

Establishing affordability and means testing

1. Administering Agents **must** undertake a detailed financial assessment of individual household circumstances using the criteria set out below. This information will be obtained from the standard application form which Administering Agents must ask prospective owners to complete when they are applying to the Open Market Shared Equity Scheme.

2. **An applicant must purchase the maximum amount of equity that they can reasonably afford, taking account of other financial commitments and the associated costs of home ownership. However, they must be strongly encouraged NOT to exceed the income multiples set out in paragraph 4** (this is important to ensure that the mortgage will remain affordable to the household over the long term, even if mortgage interest rates or other living costs rise). There may be circumstances where a 'rule of thumb' assessment shows that an applicant is unable to afford the minimum 60% equity purchase but the Decision in Principle or Key Facts Illustration indicates that the applicant can afford above the minimum 60% equity stake that is required. In these cases, if the buyer's independent financial advisor can provide written evidence demonstrating that the applicant will be able to sustain the mortgage payments as well as all other associated housing related costs then the application may be eligible to participate in the scheme. Please note that, applicants aged 60 or over do not require to take out a mortgage towards the purchase of the new property.

3. The maximum level of mortgage that an applicant is capable of funding and any other personal contribution that they are able to make will be based on the following criteria.

Income assessment

An applicant should provide the Administering Agent with details of all sources of finance when formally applying to the scheme (see Annex B). This information will be used by the Administering Agent to determine the anticipated value of mortgage finance, and the value of any other personal contributions. A household income will be considered to be the total of:

- gross earnings, per single person or couple, as appropriate;
- any other income, comprising sickness benefits, unemployment benefit, bank interest, superannuation or pension from previous employment, working families tax credit, widow's pension and shareholder's profits; and
- personal contributions comprising savings, gifts or other financial contributions. The definition of personal savings includes: cash; premium bonds; stocks and shares; unit trusts; bank or building society accounts and fixed-term investments; the surrender value of any endowment policies; property;

redundancy payments; and pension lump sum payments. In the case of applicants aged 60 or over this would also include the contribution made from the sale of any existing property.

An applicant may retain £5,000 of any personal contributions held. Above this amount, at least 90 per cent of the balance should be treated as a contribution towards the purchase of a property.

4. A 'rule of thumb'³ for the estimated maximum mortgage for an applicant in employment would be as follows:

- individual application – individual salary x 3.0 = estimated maximum; or
- joint application – joint salary x 2.5 = estimated maximum.

5. In the event that it is a joint application but only one applicant works then the individual application rule would apply.

6. Administering Agents should note that the 'rule of thumb' will not be appropriate in the case of applicants who are self-employed. Normally lenders will require sight of a minimum number of years' accounts before providing a mortgage quote although some allow self-employed people to self-certify their income.

7. An applicant should provide details of the anticipated level of mortgage finance available. **Applicants are normally required to provide one Decision in Principle and one Key Facts Illustration. Where this is not possible, there should be clear justification of the reasons. Applicants should query with their lender if either of these will involve a credit search. Searches can leave 'footprints' on the applicant's credit history which may affect the applicant's ability to obtain credit. An applicant should therefore be made aware of the need to confirm with the lender whether a Decision in Principle or Key Facts Illustration will include any form of credit search. If either of these does require a credit search the lender should explain to an applicant any potential consequences. The lender should also obtain the applicant's consent before carrying out the search.**

8. The 'rule of thumb' should be used to compare the Decision in Principle and Key Facts Illustration provided by a lender to the applicant. In the event that the level achieved by an applicant is less than the rule of thumb, an applicant must provide justification. If the level achieved by an applicant is more than the rule of thumb, an applicant must provide evidence that they have taken independent financial advice, reference to which is made in section 11 below. However, as noted in paragraph 2, applicants should be strongly discouraged from doing this unless they can show that they have considered how they would fund any future increase in mortgage or other living costs. This rule of thumb and the Decision in Principle do not form part of the

³ These are illustrative figures and may vary from time to time.

assessment criteria for applicants aged 60 or over who wish to purchase without a mortgage.

9. In assessing applications to the scheme Administering Agents should disregard any lump sum payments to a widow, widower, or partner of service personnel as a result of their partner having been killed in action.

10. The issue of how any debts incurred by applicants are treated will require to be considered by Administering Agents. Secondary loans incurred for housing purposes, essential transport costs, or to meet care and support costs may be taken into account.

11. In certain circumstances where a couple have applied to the scheme certain issues may impact on the maximum level of mortgage that they can obtain, for example an adverse credit score. Where the Decision in Principle or Key Facts Illustration in these cases is lower than the rule of thumb, Administering Agents may consider additional written evidence from the applicant's independent financial advisor that a) provides information on what the issue(s) are that have affected either the Decision in Principle or Key Facts Illustration; and b) confirmation that the applicant is able (taking into account any other existing loan and payment commitments) to sustain the mortgage payments as well as all other associated housing related costs. If the Administering Agent is content with this additional information provided it may provide flexibility for the application to be eligible to participate in the scheme. It should be noted that it is not an automatic acceptance to the scheme and contribution cannot be reduced just to allow clients to get full 40% equity stake from Scottish Ministers. Justification/evidence would be required.

12. Where an applicant with particular needs will be using their benefit entitlement to support a mortgage, a multiplier will be an inappropriate measure. The assessment should therefore be conducted using knowledge of the benefit entitlements of disabled people, reference to which is made in paragraph 13 below.

13. It is also essential that applicants are fully aware of their housing related costs and the financial responsibilities that come with home ownership. **Administering Agents should encourage applicants to seek independent legal and financial advice on all housing related costs at the earliest possible stage.**

14. Where households have, of necessity, exceptional housing and living costs which can be evidenced, greater flexibility will be required when operating the Open Market Shared Equity Scheme. This may result in lower levels of equity stake requiring to be considered (to a minimum of 51 per cent). There are no set formulas for identifying additional costs but they should be capable of being evidenced by professional supporters or other sources. A means test and affordability exercise consistent with that for other applicants should be undertaken. *In addition, in exceptional cases an applicant with a severe disability may have received a compensation payment as a result of an injury. Where the applicant provides evidence that they need to keep funds aside to meet additional living costs (e.g. the cost of employing a carer), such compensation payments should not affect a buyer's eligibility for the scheme and the applicant may not need to meet the standard*

requirement to put 90% of their savings over £5,000 towards the purchase of a property. This will apply particularly where applicants are aged 60 or over.

15. The complexity of mortgages repaid solely through benefits means that Administering Agents should consider the need to employ specialist assistance from an organisation experienced in the issues facing people with particular needs when buying a home.

Flexibility under the Open Market Shared Equity Scheme

16. If a person with particular needs is seeking any flexibility from the scheme rules around a) the minimum contribution they need to make to the scheme; b) buying a home larger than their current need; and/or c) purchasing a home above the published threshold prices, they will be required to provide written evidence to the administering agent administering the scheme to support this. Further evidence on each of these is provided below.

Flexibility to Lower Minimum Contribution to 51%

17. While the Scottish Government can in certain limited circumstances agree to reduce the minimum equity stake to as low as 51%, this can only apply where evidence is provided that (i) a housing market is particularly pressured or (ii) where a person with particular needs arising from a disability has identifiable additional housing costs (for example a live-in carer). If evidence of either of these two applicable circumstances cannot be provided, the applicant **must** contribute a minimum of 60% of the purchase price.

Buying a home that is larger than their current need

18. The scheme already allows a purchaser to buy a property that is one apartment size larger than their current needs. If a person qualifies as someone with particular housing needs arising from a disability and they request larger accommodation over and above that which they are allowed to buy under the scheme rules, evidence would need to be provided along with the application form to demonstrate the need for larger accommodation.

Exception to allow purchase of a home above published threshold prices

19. The Open Market Shared Equity Scheme has threshold prices within which all applicants must buy a home. Eligible applicants cannot buy a home for a price that is above the threshold price that is set out in their Passport Letter (which sets out the maximum size and price of a property a person can buy). There is some flexibility around allowing a person to buy a home that is above the published threshold prices.

Applying the Flexibility to the Threshold Prices

20. The Administering Agent will require evidence that the applicant is a person with particular housing needs arising from a disability (if this evidence has not already been provided). If this evidence is provided, the Administering Agent will consider any specific request from an eligible applicant to buy a home that is above the

maximum threshold prices for the scheme.

21. In providing flexibility to the maximum threshold prices, it needs to be highlighted to the applicant at an early stage that while the Scottish Government is prepared to be flexible around the threshold prices, it needs to take into account the individual person's need as well as other available houses that are either in the area or surrounding area that could be suitable. **We would expect agents to undertake a quick search on Rightmove/GSPC/ESPC to see if there are any suitable properties that meet the specific needs of the eligible buyer within the threshold prices.**

22. The Scottish Government will also look at the level of flexibility sought by the applicant (i.e. homes that are reasonably above the threshold prices will be considered but homes that are significantly above the threshold prices are not likely to be considered.

23. Applicants should be aware that they will still be required to purchase a minimum of 60% of the purchase price even if they are seeking to purchase a home that is above the threshold price for the scheme. For example if the maximum threshold price was £165,000 and the Scottish Government agreed for the eligible applicant to purchase a home for £170,000 – **the applicant's contribution still needs to be above the 60% minimum requirement.**

24. The home must be suitable for the applicant's particular needs i.e. it must satisfy the supporting evidence provided by the applicant along with their application form e.g. if an occupational therapist report suggested that a person with particular housing needs arising from a disability lived in a property that was a) near a hospital and b) on one level with no stairs, then we would expect the property to meet these recommendations. Requests for flexibility because the house is near local shops or near a place of work should not be regarded as acceptable reasons.

25. Applicants who are aged 60 and over who wish to apply for support from the scheme without mortgage finance, are considered as a priority access group providing they fulfil the following criteria:

- Applicants must demonstrate a housing need to move which must include at least one of the following*
 - Under-occupation – the applicant is living in property which is too large and needs to downsize
 - The applicant's existing property is no longer suitable to meet their needs – (e.g. they can no longer manage the stairs)
 - Support – the applicant needs to move closer to family or friends that provide care and support
 - Living in private rented accommodation

**Please note this list is not exhaustive and other circumstances can be considered as evidence of housing need.*

- Joint applications will be eligible (without the requirement for a mortgage) from couples where one of the applicants is aged 60 or over.
- Joint applications with an applicant aged 60 or over and their offspring under the age of 60 will be eligible, without the requirement for a mortgage, if the applicants can demonstrate that the offspring has a disability that affects their housing needs or ability to sustain a sole occupancy.

26. Evidence of the sale price achieved from a previous house sale or of the formal offer accepted should be requested as part of the assessment process. Reasonable expenses such as legal, estate agency fees and removal costs will be regarded as eligible deductions from the sales proceeds prior to determining the equity stake.

Worked examples

27. The following table illustrates how the grant eligibility criteria described above would apply to four households seeking to purchase under the Open Market Shared Equity Scheme in areas with different maximum price ceilings. These are the procedures that Administering Agents must follow when assessing applications to the scheme.

Case number	1	2	3	4
Local area	Perth & Kinross	Inverclyde	East Lothian	South Ayrshire
Household type	Single income	Single income	Joint income	Joint income
Household size	1 person	1 person	3 person	4 person
Apartment size	3	3	4	5
Passport application stage				
Maximum price ceiling	£120,000	£70,000	£135,000	£130,000
Income per annum	£23,000	£15,000	£38,000	£32,000
Lending multiplier	3.0	3.0	2.5	2.5
Maximum mortgage (1)	£69,000	£45,000	£95,000	£80,000
Available savings	£5,000	£0	£30,000	£12,000
Financial contribution (2)	£74,000	£45,000	£125,000	£92,000
Proposed equity stake % (3)	61.67%	64.29%	92.59%	70.77%
Passport issued (Yes/ No) (4)	Yes	Yes	No	Yes
Property purchase stage				
Price of chosen property (5)	£110,000	£69,000		£129,000
Confirmed mortgage (6)	£69,000	£45,000		£80,000
Confirmed available savings	£5,000	£0		£12,000
Confirmed contribution	£74,000	£45,000		£92,000
Actual equity stake % (7)	67.27%	65.22%		71.32%
Eligible for assistance	Yes	Yes		Yes
Grant required (8)	£36,003	£24,000		£37,000
Scottish Ministers' equity stake % (9)	32.73%	34.78%		28.68%

Notes

1. The 'maximum mortgage' is calculated by multiplying the applicant's income with the appropriate lending multiplier norm.
2. The 'financial contribution' is calculated by totalling the 'maximum mortgage' and the 'available savings' amounts. Having satisfied the Administering Agent of the maximum level of funds the applicant can raise, it becomes self-evident whether the applicant satisfies entry into the scheme financially and the maximum level of equity they can afford to purchase (see below).
3. The proposed equity stake percentage – expressed to two decimal points – is the 'financial contribution' expressed as a percentage of the local maximum price ceiling.
4. An applicant receives a 'passport' to look for a property if the proposed equity stake percentage is at or below 90 per cent. The applicant would then search for property within a defined price bracket specified – given that they are normally expected to take an equity stake of between 60 and 90 per cent of the value of a property.

Using case number 1 for illustrative purposes, the applicant's passport letter would specify that they are now able to look for a property that is valued between £81,250 and £100,000. This is because a purchase within this price bracket would mean that the applicant would be taking an equity stake percentage that was within the agreed parameters of the scheme, based on their 'financial contribution' at passport application stage. (A purchase at over £100,000 would mean that applicants were being subsidised to buy a more expensive house than the 'going rate' for first time buyers (taken as the first quartile). A purchase under £81,250 would mean that an applicant could afford to pay over 80 per cent and therefore does not qualify.)

5. The value of (or price to be offered for) the chosen property cannot exceed the local maximum price ceiling.
6. If the 'confirmed mortgage' exceeds the 'maximum mortgage' at passport application stage, the applicant must provide firm evidence that they have been working with an Independent Financial Adviser. In the event that the 'confirmed mortgage' is less than that assumed at passport application stage, the applicant must provide justification as to the reasons why.
7. The 'actual equity stake %' – expressed to two decimal points – is calculated by expressing the 'confirmed contribution' as a percentage of the 'price of chosen property'.
8. The 'grant required' is the difference between the 'price of chosen property' and the 'confirmed contribution'. The figures shown exclude the Administering Agent's agreed administrative costs, which would be included in practice.
9. The 'Scottish Ministers' equity stake %' – expressed to two decimal points – is calculated by expressing the 'grant required' as a percentage of the 'price of chosen property'. When calculating the 'Scottish Ministers' equity stake %' the 'grant required' figure **must** exclude the Administering Agent's agreed administrative costs.

Annex D

Passport letter - Reference Number _____

Dear []

Open Market Shared Equity Scheme

Thank you for returning your completed application to the Open Market Shared Equity Scheme.

We are pleased to tell you that your application has been approved and that Scottish Government has agreed to provide you with an equity loan to assist you in the purchase of a suitable home under the scheme. This means that you can now look for a property that is for sale on the open market. This approval is valid for a period of [twelve] weeks from the date of this letter and will expire on *[insert date]*. By this time, you should have had an offer to purchase a home accepted. Please note however that you do not need to have moved into the home by then.

If you are unable to find a home by *[insert date]* please let us know. We will try to extend the time you have to find a property, but this will depend on the number of applications we have received and may not therefore be possible. If we are unable to extend the time you have to look for a home, you will need to re-apply to the Open Market Shared Equity Scheme.

Although the Open Market Shared Equity Scheme does not require you to provide a deposit, you should be aware that your lender is likely to require you to provide a deposit before they provide you with a shared equity mortgage. You should discuss this with your financial advisor/lender.

Your Expected Financial Contribution

Under the Open Market Shared Equity Scheme, you must pay normally between 60 and 90 per cent of the price. Based on your current income and any other financial contributions that you can make, we have calculated the minimum amount that you can afford to contribute towards the purchase price of a home to be £().

The calculation is set out below:

Assumed contribution £

For this (we have used a 'rule of thumb' of [2.5 for a larger household] [3 for a single person] times your annual salary to give us an estimated maximum

Plus Available savings amount (90% of savings over £5000) £

Expected minimum contribution £

Scottish Government Equity Loan

Scottish Government's financial contribution takes the form of an "equity loan". This will be the amount which represents the balance between the expected minimum financial contribution to be made by you as set out above, and the price you pay for a home (see below).

The main features of this equity loan are:

- there is no set date by which you must repay the equity loan. The loan does, however, become repayable if certain events or circumstances occur, such as when you decide to sell your home;
- no interest is charged by Scottish Government on the equity loan while it is outstanding and you are not in breach of its terms;
- the equity loan is expressed as a fixed percentage of the value of your home, based upon the initial purchase price which you pay. So if you paid £100,000 to buy your home and received a Scottish Government equity loan of £20,000, this equity loan would represent a 20% equity stake in your home. When the equity loan becomes repayable to Scottish Government – for example, when the home is sold – the amount to be repaid to Scottish Government is 20% of the sale price. This may be more or less than the amount of the equity loan. For example, if the sale price was £120,000 then the amount to be repaid to Scottish Government will be 20% of £120,000 = £24,000.

The main risk associated with the equity loan is that you must comply with the applicable conditions while the loan is outstanding. These conditions are set out in the shared equity loan agreement which you must enter into with Scottish Government. Among these conditions is a requirement that you must occupy your home as your only place of residence, and a prohibition on letting your home out to a third party. If you do breach any of the applicable equity loan conditions and do not remedy the breach, you run the risk of Scottish Government taking action to enforce the terms of the shared equity loan agreement and of requiring repayment of the equity loan.

You will require to grant a standard security over title to your home in favour of Scottish Government to secure compliance with the equity loan terms, which means that Scottish Government could take steps to enforce its security in the event of a breach of the equity loan conditions, which could result in you losing your home.

There are no charges levied by Scottish Government as a condition of making an equity loan available to an eligible applicant, nor are any costs or charges levied during the period of the equity loan. There are, however, administrative charges which you need to pay to the administrative agent who administers equity loans on behalf of Scottish Government if you wish to amend certain aspects of your equity loan arrangements – for example, if you wish to purchase all or some of Scottish Government’s equity stake in your home, or if you wish to re-mortgage. You may also incur legal and valuation costs in relation to such matters.

Charges (which again can include legal and valuation costs) may also be incurred if you are in breach of the equity loan conditions, or fail to pay any sums which have become due and payable by you. This will include interest at 2% above the base rate of Royal Bank of Scotland on overdue sums.

Price of property

The Scottish Ministers have set maximum threshold prices that you can pay for a home in *[insert geographic area]* and you will not be able to buy a home costing more than the price set by the Scottish Ministers. Maximum price ceilings for different areas and property sizes are published on the Scottish Government’s website at <http://www.scotland.gov.uk/LIFT>

Size of Property

The Open Market Shared Equity Scheme allows you to buy a home that is no more than one room larger than your current need unless you have particular housing needs. This means that the size of home that you can look for should be no larger than *[inset number]* rooms, that is the number of rooms in a home excluding kitchens, hallways and bathrooms

As you are entitled to buy up to a X apartment in Y Council Area, the maximum price you could pay would be £ZZZZ This would be subject to the property valuation as set out in the Home Report.

[You should note that the maximum stake that you can take in a home in *[insert geographic area]* is 90 per cent. This is because the Scottish Ministers would like to keep a 10 per cent equity stake in the property, known as a ‘golden share’. (*Delete if not applicable*)]

Use of Property

You will be expected to live in the house as your only residence. No letting out or sharing occupation of the house with any third party is permitted. The purpose of the Open Market Shared Equity Scheme is not to assist people to purchase buy to let or second properties.

Budgeting

When you are considering buying a home you need to allow for a number of costs including:

- legal expenses including all registration dues;
- Land and Buildings Transaction Tax (where applicable); and
- mortgage arrangement fees,

and you should discuss these with your solicitor and/or your financial adviser as soon as possible.

It is very important that as well as the mortgage repayments on the home, you can also afford all the other costs of owning a home which include:

- paying tax on your property to your local authority;
- any factoring or common charges payable for the repair and upkeep of common areas and you are advised to check what these costs are before your solicitor submits an offer to buy a property on your behalf;
- buildings and home contents insurance.

If you have not already done so, we would again encourage you to seek independent advice on the legal and financial costs and responsibilities that come with being a home owner

What you should do next

When you appoint a solicitor to assist you with purchasing your property, please provide them with a copy of this letter.

Your solicitor will need to use certain legal documentation that is set out in the [OMSE Administrative Procedures](#).

- **YOU SHOULD ENSURE THAT YOUR SOLICITOR ADVISES YOU ON THE IMPLICATIONS OF THE OPEN MARKET SHARED EQUITY SCHEME AND THE TERMS OF ALL DOCUMENTATION AND THAT YOU ARE SATISFIED AND YOU FULLY UNDERSTAND WHAT YOU ARE COMMITTING YOURSELF TO BEFORE AGREEING TO ENTER INTO ANY LEGAL COMMITMENTS;** and
- **THE SHARED EQUITY ARRANGEMENTS WILL INCLUDE THE GRANTING OF A MORTGAGE (OR 'STANDARD SECURITY' AS IT IS KNOWN IN SCOTLAND) TO SECURE THE RIGHTS OF THE SCOTTISH GOVERNMENT. YOU SHOULD CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME, OR IF YOU WANT YOUR FAMILY TO INHERIT IT.**

If you do not already have a solicitor your mortgage provider or independent financial adviser may be able to recommend certain legal firms having regard to matters such as cost, experience and quality of service. When you are contacting firms of solicitors please let them know straight away that you are looking to buy a home under the Open Market Shared Equity Scheme. Once again you should advise us immediately that you do appoint a solicitor.

What you should do when you have found a property

Please tell us immediately when you have found a home that you would like to buy and send us the particulars of sale as well as details of the solicitor who will be acting for you if you have not done so already. We will check that the home is within our area of operation, and that the size of the home complies with the rules of the scheme.

If it does, we will ask you to obtain a valuation from an independent professionally qualified valuer who is registered with the RICS. This valuation will form part of the Home Report unless the property is a new build in which event you will be required to obtain a valuation. You should also ask your solicitor at this point to place a 'note of interest' with the solicitor or estate agent marketing the home for sale. This means that the seller has to notify you of any formal interest in the home, such as a verbal offer or any other change in the sale such as a closing date.

Property purchase

When we receive the valuation report, we will let you know if the home meets the eligibility criteria for the Open Market Shared Equity Scheme. If it does, you can instruct your solicitor to issue a formal offer to purchase. **You must not instruct your solicitor to issue a formal offer to purchase until we have written to you to confirm that the home you would like to buy meets the required eligibility criteria.**

Please remember that the maximum price that you can offer is the valuation price – given by an independent professionally qualified valuer who is registered with the Royal Institution of Chartered Surveyors – and that this must be within the limits set out above.

If your offer is to be accepted your solicitor will need to confirm the following to our solicitor:

- the accepted offer price;
- the proposed date of entry;
- details of primary lender and principal amount to be advanced by them.

This will enable our solicitors to promptly process the shared equity documentation and forward it to your solicitor as well as liaise with him in order to ensure an orderly completion.

Settlement date

We will arrange for the Scottish Government's contribution to the purchase price to be with your solicitor in time for the date of settlement. Once the purchase price has been paid in full, you will be given the keys to your new home.

We hope all of the above is clear. If you need any further help however please do not hesitate to contact us.*[insert details]*.

Yours sincerely

Annex E

Standard form of monthly report

Administering Agent
or subsidiary (“Registered
Social Landlord”)

Financial year:

Date of report:

Application forms issued and returned – by local authority area

Local authority area	Total number of application forms issued	Total number of fully completed application forms returned (including fully completed application forms returned from those living in the social rented sector)	Total number of fully completed application forms returned from those living in the social rented sector
Total			

Passport letters issued – in each local authority area by apartment size

Local authority area	Apartment size	Total number of passport letters issued (including passport letters issued to those living in the social rented sector)	1. Total number of 'live' passport letters⁴ (including 'live' passport letters to those living in the social rented sector)	Total number of passport letters that have expired (including passport letters that have expired to those living in the social rented sector)
Local authority area 1 (specify)	2			
	3			
	4			
	5			
	6			
	7			
Local authority area 2 (specify)	2			
	3			
	4			
	5			
	6			
	7			
Local authority area 3 (specify) etc	2 (etc)			
Total				

⁴ The total number of 'live' passport letters should exclude property purchases that have taken place.

Passport letters issued – in each local authority area by apartment size (continued)

Local authority area	Apartment size	Total number of passport letters issued to those living in the social rented sector	Total number of 'live' passport letters issued to those living in the social rented sector¹⁰	Total number of passport letters issued to those living in the social rented sector that have expired
Local authority area 1 (specify)	2			
	3			
	4			
	5			
	6			
	7			
Local authority area 2 (specify)	2			
	3			
	4			
	5			
	6			
	7			
Local authority area 3 (specify) etc	2 (etc)			
Total				

¹⁰ The total number of 'live' passport letters should exclude property purchases that have taken place.

Property purchases, purchase costs and grant received – in each local area¹¹ by apartment size

Local areas	Apartment size	Total number of purchases (including those from people previously living in the social rented sector)	Total number of purchases by those previously living in the social rented sector	Total number of purchases with the 'golden share'	Total purchase costs ¹²	Grant received (including the Administering Agent's administrative costs)
Local area 1 (specify)	2					
	3					
	4					
	5					
	6					
	7					
	Local area 2 (specify)	2				
3						
4						
5						
6						
Local area 3 etc (specify)	7					
	2 etc					
Total						

¹¹ The term 'local area' refers to the areas where individual maximum price ceilings have been set.

¹² The figure entered here should be the total price of properties purchased plus the Administering Agent's total administrative costs.

Capital receipts – in each local area¹³ by apartment size

Local areas	Apartment size	Total amount of capital receipts generated
Local area 1 (specify)	2	
	3	
	4	
	5	
	6	
	7	
	Local area 2 (specify)	2
3		
4		
5		
6		
Local area 3 etc (specify)	2 etc	
Total		

➤ Were any of these capital receipts generated through properties being repossessed? Yes/ No

If yes, how many properties have been repossessed? _____

<p>Administering Agent declaration: We hereby certify that the information given above is true and complete.</p>	<p>Signature: _____</p> <p>Date: _____</p>
---	--

¹³ The term 'local area' refers to the areas where individual purchase maximum price ceilings have been set.

Monthly Summary Report
Open Market Shared Equity Scheme - position as at _____

Administrative area	No. of application forms issued	No. of complete forms returned		No. of passport letters issued		No. of 'live' passport letters		No. of passport letters that have expired		Property purchases			
	Total	Total	Total social rented sector	Total	Total social rented sector	Total	Total social rented sector	Total	Total social rented sector	Total	Total social rented sector	Purchase costs	Total grant received
Edinburgh & the Lothians													
Edinburgh													
East Lothian													
Fife													
Midlothian													
Scottish Borders													
West Lothian													
Sub total													
Eilean Siar													
Eilean Siar													
Grampian													
Aberdeen City													
Aberdeenshire													
Moray													
Sub total													
Highland													
Highland													
Orkney													
Orkney													

Administrative area	No. of application forms issued	No. of complete forms returned		No. of passport letters issued		No. of 'live' passport letters		No. of passport letters that have expired		Property purchases			
		Total	Total social rented sector	Total	Total social rented sector	Total	Total social rented sector	Total	Total social rented sector	Total	Total social rented sector	Purchase costs	Total grant received
Shetland													
Shetland													
Tayside & Forth Valley													
Angus													
Clackmannanshire													
Dundee													
Falkirk													
Perth and Kinross													
Stirling													
Sub total													
West													
Argyll & Bute													
Dumfries & Galloway													
East Ayrshire													
East Dunbartonshire													
East Renfrewshire													
Glasgow													
Inverclyde													
North Ayrshire													
North Lanarkshire													
Renfrewshire													
South Ayrshire													
South Lanarkshire													
West Dunbartonshire													
Sub total													
Grand total													



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