

HOUSING INVESTMENT GUIDANCE NOTE



The Scottish
Government

To: All Registered Social Landlords (RSLs)

Subject: Shared Equity: Owners in regeneration areas – Rights of Succession

Issued by: Housing Investment Division (HID)

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This guidance note tells you about a change to the Shared Equity Minute of Agreement between the Scottish Ministers and a Shared Equity Owner. **This change relates only to owners in regeneration areas whose homes are subject to demolition and who will take ownership of replacement Shared Equity properties.**

You will find a copy of this guidance note on the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/investment/guidancenotes>

This Guidance Note has been copied to Glasgow and Edinburgh City Councils, COSLA and SFHA.

Introduction

Although the majority of Shared Equity funding is targeted at helping people on low incomes who wish to own their home but who cannot afford to pay the full price for a house, a small amount of funding is used to help existing owners whose homes are scheduled for demolition in regeneration areas become Shared Equity owners. Rather than taking the usual equity stake of between 60 and 80% of the market value of a property, owners participating in agreed redevelopment plans are expected to invest, as a minimum, the value of their existing home in an equity stake of the new one.

Addition to the legal documentation within the New Supply Shared Equity Administrative Procedures

At present, any Shared Equity owner can pass ownership of their property to their surviving spouse without having to repay the Scottish Ministers' equity stake¹ so long as the spouse enters into a Shared Equity Agreement within six months of the Shared Equity owner dying. If a Shared Equity owner wishes to transfer their property to anyone else a 'payment event' is triggered and the Scottish Ministers' equity stake must be repaid.

As this places owners in regeneration areas who will become Shared Equity owners as a result of their home being demolished in a less favourable position than they currently enjoy, **a Shared Equity Agreement has been drawn up which gives owners whose homes are subject to demolition in regeneration areas the option when they die of transferring the replacement Shared Equity property to their children as well as their spouse.** The Shared Equity Agreement is attached at Annex A.

This is on condition that:

- a) the person(s) taking ownership of the property enters into a Shared Equity Agreement with the Scottish Ministers within six months of the Shared Equity owner dying; and
- b) the person(s) taking ownership lives in the property as their sole residence.

If a Shared Equity Agreement is not entered into within the required timescale, a 'payment event' would be triggered and the Scottish Ministers' equity stake must be repaid.

Amendments to existing Shared Equity agreements

In the interest of fairness, this option is also extended to existing Shared Equity owners who previously owned homes in regeneration areas which were demolished.

¹ Prior to 5 April 2008, equity stakes were held by registered social landlords rather than the Scottish Ministers.

All RSLs should contact existing shared equity homeowners who previously owned a home in regeneration area which was demolished to advise them of this change. Homeowners should be advised by RSLs that they can choose to either continue with their existing agreement or they may have a new Agreement drawn up.

If you have any questions on the above please contact your local Scottish Government Regional Office or, in the case of Edinburgh and Glasgow, the City Councils.

AGREEMENT

between

THE SCOTTISH MINISTERS

and

[Home owner]

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MINUTE OF AGREEMENT

between

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

and

[*insert names of persons who will acquire under the disposition*] # residing at # ON
THE OTHER PART

WHEREAS:

(One) [*Insert name of RSL selling property*] (“the RSL”) has sold to the Shared Equity Owner the dwellinghouse known as # at the price of # (£#) (being [#] per cent of the current value of the Property as agreed between the Parties);

(Two) Funding in respect of the dwellinghouse has partly been provided by Scottish Ministers 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. In this Minute of Agreement where the context so admits:

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;
“Agreement”	means this agreement;

<p>“Child”</p>	<p>means a child or children of the Shared Equity Owner to whom title to the property has transmitted following the death of the Shared Equity Owner and for the avoidance of doubt the terms of Section 108 (2) (a) – (d) inclusive shall be taken into account in interpreting the term “child”;</p>
<p>“Date of Entry”</p>	<p>means <i>[here insert the date of entry under the contract for sale]</i>;</p>
<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 schedules to those regulations</p>

“New Proportion”	has the meaning ascribed to it in clause 3;
“New Security”	means any standard security over the Property or any part thereof other than (1) the Standard Security and (2) any standard security specifically referred to in the Ranking Agreement;
“Open Market Conditions”	means the following conditions (i) the Shared Equity Owner has taken all reasonable steps to ensure that the price at which the Property is to be sold is the best that can be reasonably obtained which will include, without prejudice, being satisfied with the nature and level of advertising and marketing of the Property and the terms of sale; and (ii) the sum offered by the third party has not been adversely affected by any of the Open Market Value Assumptions not being the case in fact;
“Open Market Sale”	a sale of the whole of the Property in the open market to a third party in circumstances where Scottish Ministers, acting reasonably, are and remain satisfied that the Open Market Conditions have been met;
“Open Market Value Assumptions”	means the following assumptions: 1. that the Property is being sold by a willing seller to a willing purchaser in the open market on an arm’s length basis;

	<ol style="list-style-type: none"> 2. that vacant possession of the Property is available; 3. that the Shared Equity Owner has duly complied with, performed and discharged all of the obligations incumbent upon him in terms of this Agreement; 4. that the Shared Equity Owner has complied with the obligations incumbent upon him in terms of the Standard Security; 5. that there is no Encumbrance affecting the Property; 6. that any increase in value arising from any additions or improvements carried out to the Property is to be reflected in the open market value; and 7. that any diminution in value arising from adaptations which have been carried out to meet the needs of a disabled person is to be disregarded from the open market value;
“Parties”	means the parties to this Agreement;
“Payment Event”	means any one or more of the following events:

(a) an Open Market Sale other than in the circumstances set out in Clause 2.7.2;

(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 in the circumstances set out in Clause 2.7.2;

(c) the failure on the part of a Spouse, or where relevant a Child to comply with the terms of Clause 2.7.2;

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

(e) (If the Shared Equity Owner comprises more than one person) the death of the survivor of such persons, in circumstances where no Child is eligible to assume the liabilities of the Shared Equity Owner hereunder;

(f) The Shared Equity Owner ceasing to use the Property as his only place

of residence or renting the Property or allowing it to be occupied by a third party without the prior written consent of Scottish Ministers;

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

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

(i) Any default under the Standard Security;

(j) The expiry of a period of nineteen years from the date of execution of this Agreement by the Shared Equity Owner unless (a) the Shared Equity Owner grants a further validly constituted standard security ("Substitute Security") in favour of Scottish Ministers over the Property in substitution for the Standard Security and (b) that Scottish Ministers are satisfied (acting reasonably): (i) with the terms of the Substitute Security and all amendments to other documentation which it is necessary

	<p>or desirable to make as a result of the entering into of the Substitute Security; and (ii) that the Substitute Security will at all times validly and effectively secure all of the Shared Equity Owner's obligations under this Agreement; or</p> <p>(k) 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 their agents in connection with the granting or transmission of this Agreement;</p>
"Property"	means the whole of the property at <i>[insert the postal address]</i> ;
"Ranking Agreement"	means the agreement regulating the ranking of standard securities between Scottish Ministers, the Shared Equity Owner, and <i>[insert details of the Primary Lender]</i> ;
"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;
"Shared Equity Owner"	means the said <i>[insert names of original owners]</i> and any Spouse or Child who succeeds them as owner of the Property in terms of this

	Agreement;
“Spouse”	means a person who lives with the Shared Equity Owner and is the husband or the wife, or lives with the Shared Equity Owner as the husband or wife; or lives with the Shared Equity Owner in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex; or is the civil partner of the Shared Equity Owner in terms of the Civil Partnership Act 2004;
“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, provided that such assignation, transfer of succession permitted under this Agreement;
- 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 agents 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.
- 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 5.1 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 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 whom failing a Child who assumes the obligations of the Shared Equity Owner in terms satisfactory to Scottish Ministers within six months of such transfer or transmission.

3. Tranching Up

[Clause 3.1 to clause 3.1.5 below should be used where Scottish Ministers will not retain a 'golden share' in the Property. Alternative clauses are provided if Scottish Ministers are retaining a 'golden share' in the Property (see below).]

3.1 At any time after the second anniversary of 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 the Shared Equity Owner shall have not previously exercised his right to reduce Scottish Ministers' Proportion on more than one occasion;

3.1.3 the Shared Equity Owner shall not be entitled to exercise his right to reduce Scottish Ministers' Proportion in terms of this clause 3.1 more than once in each period of twelve months;

3.1.4 Scottish Ministers' Proportion expressed as a percentage after the Shared Equity Owner's exercise of this right shall be twenty per cent or less; and

3.1.5 in the event that the Shared Equity Owner has exercised his right to reduce Scottish Ministers' Proportion in terms of this clause 3.1 on one occasion, the Shared Equity Owner shall only be entitled on a subsequent occasion to exercise such right to extinguish Scottish Ministers' Proportion in its entirety so that the New Proportion shall be zero.

[Clause 3.1 to clause 3.1.2 below should be used where Scottish Ministers are retaining a 'golden share' in the property.]

- 3.1 At any time after the second anniversary of 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 and the Standard Security and such right to reduce shall only be exercisable on one occasion; and
 - 3.1.2 Scottish Ministers' Proportion expressed as a percentage after the Shared Equity Owner's exercise of this right shall be twenty per cent.
- 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 two extracts 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 including any application for consent and any right of pre-emption.

[Clause 5 below should only be used where Scottish Ministers are retaining a 'golden share' in the property. If this is not the case, this clause should be deleted.]

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 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;

B = Scottish Ministers' Proportion.

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

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

- 5.2 The Scottish Ministers' right of pre-emption in terms of this clause 5 shall be exercised by Scottish Ministers giving notice in writing to the Shared Equity Owner within twenty one days from the date of receipt by Scottish Ministers of written notice of determination of the price in terms of this clause 5.
- 5.3 In the event that Scottish Ministers decide not to exercise their right of pre-emption the terms of clause 2 (Obligation to Pay) shall apply.

6. Certificates and Determinations

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

7. Interest and Losses

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

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

8. 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 or any standard security granted in substitution therefor.

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 without the consent of the Scottish Ministers 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 registered social landlord or subsidiary including contact person]*

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 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>