

DATED

28th September

2016

(1) STAFFORDSHIRE COUNTY COUNCIL

(2) THE GOVERNING BODY OF CRACKLEY BANK PRIMARY SCHOOL

(3) CHESTERTON ACADEMY TRUST

TRANSFER AGREEMENT

Re: Crackley Bank Primary School, Newcastle-under-Lyme



John Tradewell
Solicitor to the County Council
Director of Strategy, Governance and Change
Staffordshire County Council
Staffordshire Place 2
Stafford
ST16 2DH

THIS AGREEMENT is made

28th September

2016

BETWEEN:

- (1) **STAFFORDSHIRE COUNTY COUNCIL** of 2 Staffordshire Place Tipping Street, Stafford, ST16 2DH (the "**Council**");
- (2) **THE GOVERNING BODY OF CRACKLEY BANK PRIMARY SCHOOL** of Blackthorn Place, Newcastle-under-Lyme, Staffordshire, ST5 7BE (the "**Governing Body**");
- (3) **CHESTERTON ACADEMY TRUST** a company limited by guarantee registered in England and Wales (company number 08786812) whose registered office is at Castle Street, Chesterton, Newcastle-under-Lyme, Staffordshire, ST5 7LP (the "**Company**").

WHEREAS

- (A) The Governing Body will dissolve and the Company will, from the Transfer Date, operate the Academy on the same site as the School.
- (B) The freehold site of the School is owned by the Council and on the Transfer Date the Council will grant a lease to the Company of the site currently occupied by the School.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words shall have the following meanings:-

- "Academy"** means the academy to be run by the Company on the site of the School under the proposed name Crackley Bank Primary School;
- "Assets"** means all property, undertaking, Intellectual Property and assets, whether tangible or intangible, of whatever nature used or held by the Council and/or the Governing Body (as the case may be) for the purposes of operating and running the School including (without limitation) those assets listed in Schedule 3, but not including the Excluded Assets;
- "Building Contracts"** means any contract or appointment between the Council and a Building Contractor relating to the design and/or carrying out of works and services at the School; including any collateral warranties, guarantees and bonds in relation to the Building Contracts;

"Building Contractor"

means the contractor or professional consultant with whom the Council enters into the Building Contracts;

"Children's Barred List"

means the single barred list for those who are barred from engaging in regulated activity with children as required by the Safeguarding Vulnerable Groups Act 2006 and maintained by the Disclosure and Barring Service and amended by the Protection of Freedom Act 2012;

"Contractor"

means a contractor providing services to the School prior to the Transfer Date and the Company on or after the Transfer Date to whom the contract of employment of any Transferring Employee is transferred pursuant to the Regulations on or after the Transfer Date;

"Contracts"

means any contracts (including any collateral warranties, guarantees, bonds and third party rights in favour of the Council and/or the Governing Body (irrespective of whether the Council or the Governing Body is a signatory to the same)) entered into by the Council and/or the Governing Body (as the case may be) for the purpose of operating the School in the ordinary course of business which are still in force at the Transfer Date, including without limitation:

- (i) contracts, collateral warranties, guarantees, bonds and third party rights relating to building, improvement, maintenance or other works of the land and buildings comprised in the site of the School
- (ii) any collateral warranties, guarantees, bonds and third party rights in favour of the Council and/or the Governing Body; and
- (iii) those contracts referred to in Schedule 2;
- (iv) the building contracts subject to clause 10.9 and 10.10 of this Agreement and Schedule 5.

and where such Contract(s) entered into by the Council relating to the School and other schools operated by the Council, then only such part of the Contract(s) which relate to the School shall apply.

"Data Protection Legislation" / "DPA"

means the Data Protection Act 1998, and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable; the guidance and codes of practice issued by the Information Commissioner;

"Deed of Use"

means the agreement in relation to the use of a designated area on the school site between Staffordshire County Council (1) and The Governing Body of Crackley Bank Primary School (2) dated 24th December 2015;

"Deemed Transfer"

has the meaning as set out in Clause 7;

"Directive"

means the Safeguarding of Employees Directive (2001/23/EC) (as amended, re-enacted or extended from time to time);

"Disclosure Bundle"

means the collection of documents which the Council's Human Resources department shall disclose to the Company prior to the conversion date;

"Disclosure and Barring Service"

The organisation established under the Protection of Freedoms Act 2012 and formed on 1 December 2012 by the merging of functions of the Criminal Records Bureau and the Independent Safeguarding Authority;

"Eligible Employees"

means the Transferring Employees who are active members of or eligible to join either the LGPS or the TPS Immediately before the Transfer Date;

"Employee Liability Information"

means the information which the Council is obliged to notify to the Company pursuant to Regulation 11(2) of the Regulations;

"Employee Schedule"

means a list of all School Employees as at the date that the list is provided to the Company by the Council

and/or Governing Body including but not limited to Employee Liability Information and Staffing Information;

"Encumbrance"

means any mortgage, charge, pledge, lien, equity, option, restriction, right of refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind, and any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect;

"Energy Contracts"

means contracts entered into by the County Council for the provision of gas and electricity to the County Council including schools;

"Excluded Assets"

means the assets outlined in Schedule 4 which are excluded from the transfer effected by this Agreement;

"Funding Agreement"

means a funding agreement to be entered into between the Secretary of State for Education and the Company with regard to funding arrangements for the Academy;

"Future Liabilities"

means all receipts relating to the Assets and/or Contracts and all Losses and outgoings incurred or payable in relation to the Assets and/or Contracts in connection with the period from and including the Transfer Date;

"Historic Liabilities"

means all receipts relating to the Assets and/or the Contracts and all Losses and outgoings incurred or payable in relation to the Assets and/or the Contracts in connection with the period up to the Transfer Date;

"Intellectual Property"

means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

"LGPS"	means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as from time to time amended;
"LGPS Regulations"	means the Local Government Pension Scheme Regulations 2013 as amended, and the LGPS (Transitional Provisions, Savings and Amendment Regulations) 2014;
"Loss"	means all costs, claims, liabilities and expenses (including reasonable legal expenses) relating to the operation of the School;
"Personnel Files"	means in respect of the Transferring Employees (employed by the Council or the Governing Body as the case may be) copies of all personnel files or records relating to their employment at the School and any previous period of continuous employment with the Council and/or the Governing Body, including without limitation a copy of any contractual documentation, any documentation relating to job description, pay information, training records, information relating to sickness absence, a copy of any disciplinary warnings and a copy of any grievances;
"Pupil Records"	means all information in whatsoever form, held by the Governing Body and the Council in relation to pupils past and present at the School including but not limited to all information contained on 'Sims.Net';
"Regulations"	means The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings Regulations 2014 (as amended or re-enacted from time to time);
"School"	means the education establishment known as Crackley Bank Primary School operated from the Site(s);

"School Employees"	means any employees of the Council and/or the Governing Body (as the case may be) or any persons who are assigned to the School or to services provided in connection with the School to the extent necessary for the Regulations to apply or be alleged to apply;
"Site"	means Backthorn place, Newcastle-under-Lyme, Staffordshire, ST5 7BE from which the School is operated as at the Transfer Date;
"Staffing Information"	means the information held by the Council and/or the Governing Body (as the case may be), in respect of the School Employees, as set out in Schedule 1;
"TPS"	means the Teachers' Pension Scheme established pursuant to Teacher's Pension Scheme Regulations 2010 made by the Secretary of State in exercise of powers under sections 9 and 12 of and Schedule 3 to the Superannuation Act 1972 as may be amended from time to time;
"TPS Regulations"	means the Teachers' Pension Scheme Regulations 2010 (as amended from time to time);
"Transfer Date"	means ^{October} 1 st September 2016; PLG
"Transferring Employees"	means any School Employees whose employment transfers to the Company or to a Contractor on the Transfer Date pursuant to the Regulations and who are listed in the Employee Schedule;
"Working Day"	means Monday to Friday except for statutory bank holidays and such other local government holidays.

1.2 In this Agreement (except where the context otherwise requires):

1.2.1 use of the singular includes the plural (and vice versa) and use of any gender includes the other genders;

1.2.2 a reference to a party is to a party to this Agreement and shall include that party's personal representatives, successors or permitted assignees;

1.2.3 a reference to persons includes natural persons, firms, partnerships, bodies corporate and corporations, and associations, organisations, governments, states, foundations, trusts and other unincorporated bodies (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence); and

1.2.4 a reference to a Clause or Schedule is to the relevant clause or schedule to this Agreement; a reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears.

1.3 The Schedules form an integral part of this Agreement and have effect as if set out in full in the body of this Agreement. A reference to this Agreement includes the Schedules.

1.4 In the event of any conflict or inconsistency between the Clauses and the Schedules of this Agreement, the Clauses shall prevail.

1.5 General words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms.

1.6 Any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it as from time to time amended, consolidated or re-enacted.

2. **CONDITION PRECEDENT**

This Agreement is conditional on the Funding Agreement being signed by the Company and the Secretary of State. If the Funding Agreement is not so signed by the date which is six months after the date of this Agreement (the "Deadline"), this Agreement will cease to have effect on the day after the Deadline.

3. **TRANSFER AND OPERATION OF THE REGULATIONS**

3.1 The Parties intend and acknowledge that the closing of the School and the opening of the Academy shall constitute a transfer to which the Directive and the Regulations apply. The Parties agree that as a consequence the contracts of employment made between the current employer and the Transferring Employees shall have effect from and after the Transfer Date, as if they were originally made between the Company or (as the case may be) a Contractor and the Transferring Employees.

3.2 Subject at all times to the provisions of Clause 2, the transfer envisaged by and under Clause 3.1 above shall take place and be effective from the Transfer Date.

3.3 The Council and/or the Governing Body (as the case may be) shall transfer to the Company with effect from the Transfer Date:

3.3.1 the Contracts;

3.3.2 the Assets;

3.3.3 the Transferring Employees;

3.3.4 the Personnel Files; and

3.3.5 the Pupil Records;

free from any and all Encumbrances except those as are expressly stated in this Agreement and/or except as disclosed (by express statement or disclosure and/or by implication) by virtue of the disclosures set out and evidenced in the Disclosure Bundle.

3.4 The Council shall use reasonable endeavours to procure the transfer of the legal and beneficial interest in the Assets free of charge and free from any Encumbrance to the Company to the extent that it is not the owner and save for any Encumbrance where the Council and/or the Governing Body is not aware having made reasonable enquiries or which has been fully and accurately disclosed to the Company prior to the Transfer Date in the Disclosure Bundle.

3.5 Subject to the other provisions of this Clause 3 the Company shall with effect from the Transfer Date assume the obligations of the Council and/or the Governing Body (as the case may be) and shall become entitled to the benefits of the Council and/or the Governing Body (as the case may be) under the Contracts.

4. PROVISION OF STAFFING INFORMATION AND WARRANTIES

4.1 Without prejudice to its obligation pursuant to the Regulations to provide the Employee Liability Information, the Council shall no later than 28 days before the Transfer Date to the extent lawfully permitted provide the Company with the Employee Schedule.

4.2 The Council shall notify the Company of any material change to the Employee Schedule as soon as is reasonably practicable, and shall upon request by the Company meet the Company to discuss the Information disclosed.

- 4.3 Subjects at all times to clauses 4.4, 4.5 and/or 4.6, the Council warrants in respect of any School Employee employed by the Council so far as it is aware having made all reasonable enquiries as at the Transfer Date:
- 4.3.1 that the information in the Employee Schedule is complete and accurate and is up-to-date up to and including the day before the Transfer Date;
 - 4.3.2 that so far as it is aware neither it nor any School Employer is in material breach of the contract of employment nor the School Employees in material breach of their contract of employment;
 - 4.3.3 that none of the School Employees have given or received notice of termination of employment;
 - 4.3.4 that none of the School Employees are the subject of any material disciplinary action nor is any School Employee engaged in any grievance procedure;
 - 4.3.5 that neither it nor any School Employee is engaged in any dispute, claim or legal proceedings, arising under contract or common law or arising out of or relating to any statute including the provisions of the Regulations and any claim or allegation of unlawful discrimination;
 - 4.3.6 that, all School Employees who carry out teaching are eligible to do so in accordance with the Education (Specified Work and Registration) (England) Regulations 2003; and
 - 4.3.7 that by the Transfer Date all School employees will have been checked against the Children's Barred List and where required under their contract of employment checked through the Disclosure & Barring Service.
- 4.4 The Council makes no warranty in respect of Clauses 4.3.2, 4.3.3 and 4.3.4 of this Agreement in relation to any actions of the Governing Body which could effect the accuracy of the information the Council holds on the School Employees and which is an act that the Council were not a party to or aware of.
- 4.5 The Council makes no warranty in respect of Clause 4.3.6 of this Agreement in relation to any of School Employees for whom applications to the Disclosure & Barring Service have been made but no response has been received prior to the Transfer Date.
- 4.6 All of the Warranties representations and/or Undertakings given by the Governing Body and/or the council under and in accordance with this Agreement are given at all times subject to and qualified by and with the exception of those documents deeds,

information and/or matters disclosed (either expressly or by implication) by virtue of the disclosures set out in and evidence by the Disclosure Bundle.

- 4.7 The Council undertakes to the Company that up to and including the Transfer Date that:
- 4.7.1 the Council shall enable and assist the Company and such other persons as the Company may determine to communicate with and meet the School Employees and their trade union(s) or other employee representatives;
 - 4.7.2 the Council shall not, without the prior written consent of the Company:
 - 4.7.2.1 amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay and job description) of any School Employees (other than where such amendment or variation has previously been agreed between the Council and the School Employees in the normal course of business and/or employment, and where any such amendment or variation is not in any way related to the transfer to the Company);
 - 4.7.2.2 terminate or give notice to terminate the employment or engagement of any School Employees (other than in circumstances in which the termination is for reasons of misconduct or lack of capability); or
 - 4.7.2.3 employ or assign any person to the School who would or might as a consequence of such employment or assignment become a Transferring Employee;

5. APPORTIONMENTS

- 5.1 The Council shall:
- 5.1.1 be responsible for all emoluments and outgoings in respect of the School Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part up to the Transfer Date; and
 - 5.1.2 indemnify the Company (both for itself and any Contractor) against all Losses incurred by the Company or any Contractor in respect of the responsibility set out in clause 5.1.1.

- 5.2 The Company shall be responsible for all emoluments and/or outgoings in respect of the Transferring Employees (including all remuneration, benefits, bonuses, rewards, wages, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period following the Transfer Date, and will indemnify and keep indemnified the Council against any and all Losses, damages, awards and settlements in respect of such responsibilities.
- 5.3 The Council shall pay and be liable in full for any and all bills, utility expenses, running costs, lease hire, rental charges, licence fees, subscriptions, due and/or payable in respect of the period up to the Transfer Date which relate to the running, performance and/or operation of the School.
- 5.4 The Company will pay and be liable in full for any and all bills, utility expenses, running costs, lease hire, rental charges, licence fees, subscriptions, due and/or payable in respect of the period starting with the Transfer Date and following the Transfer Date.
- 5.5 All Historic Liabilities shall belong to, and be paid and discharged by, the Council or, as the case may be, the Governing Body and the Council undertakes to indemnify and keep the Company and the Governing Body indemnified against any Historic Liabilities.
- 5.6 All Future Liabilities shall belong to, and be paid and discharged by, the Company and the Company undertakes or, as the case may be, the Governing Body and the Company undertakes to indemnify and keep the Council and the Governing Body indemnified against any Future Liabilities.
- 5.7 The Company agrees that, following the Transfer Date, it shall provide the Council with sufficient information, as reasonably requested by the Council and to the extent it is held by or reasonably available to the Company to enable the Council to accurately determine and discharge any Historic Liabilities (including, without limitation, any payments relating to the School's accounts).
- 5.8 In the event that the Council makes a payment, underpayment or overpayment in relation to any Historic Liabilities which is not reflected in the determination of the School's accounts (including, without limitation, any payments relating to the School's accounts), the Council and the Company agree to repay any such sums to the other (as appropriate). In the event that the Council has made no payment in relation to any Historic Liabilities but has received payment from the Secretary of State in respect of these, and this amount is an underpayment or an overpayment, the Council and the Company agree to repay any such sums to the other (as appropriate).

6. INFORMATION AND CONSULTATION

- 6.1 The Company shall comply (and shall procure that any Contractor complies) with its obligations under Regulation 13 of the Regulations during the period prior to the Transfer Date.
- 6.2 The Council shall comply with its obligations under Regulations 13 and 14 of the Regulations during the period prior to the Transfer Date.
- 6.3 The Council shall not be in breach of its obligations under Regulations 13 and/or 14 of the Regulations and/or Clause 6.2 above where the Council is unable to comply as a result of a failure of the Company and/or Contractor (as appropriate) to comply with their duties under Regulation 13 of the Regulations.

7. INDEMNITIES

- 7.1 The Council shall indemnify the Company against reasonably foreseeable Losses incurred by the Company following the Transfer Date in connection with or as a direct result of:
- 7.1.1 any claim by any School Employee or former School Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, personal injury, a protective award or a claim or demand of any other nature, in each case arising directly and exclusively from any positive act of the Council, prior to the Transfer Date, in respect of any School Employee or former School Employee.
 - 7.1.2 any failure by the Council to comply with its obligations under Regulations 13 and 14 of the Regulations, or any award of compensation under Regulation 15 of the Regulations;
 - 7.1.3 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the School Employees arising from or connected with any failure by the Council to comply with any legal obligation to such trade union, body or person; and/or
 - 7.1.4 any claim by a School Employee in respect of which the Company incurs is alleged to incur responsibility or liability as a result of the operation of the Regulations.

- 7.2 If, in connection with the closing of the School and the opening of the Academy it is found or alleged that the employment of any person other than the Transferring Employee has transferred to the Company pursuant to the Directive or the Regulations ("**Deemed Transfer**"):
- 7.2.1 the Company (or where applicable the Contractor) will give the Council 15 working days written notice as soon as reasonably practicable after it becomes aware of the Deemed Transfer before the Company takes any action (including but not limited to any action to terminate or compromise the employment of the person to which the Deemed Transfer relates) in respect of that Deemed Transfer;
 - 7.2.2 any action to be taken by the Company in respect of the Deemed Transfer will be expressly agreed in advance between the Council and the Company, before any such action is taken;
 - 7.2.3 the Council shall, subject to Clause 8, indemnify and keep indemnified the Company against all direct Losses which the Company actually incur in respect of the Deemed Transfer.
- 7.3 The Company shall (in respect of School Employees employed by the Company), use reasonable endeavours to procure that any Contractor shall (in respect of School Employees employed by the Contractor), indemnify the Council against any and all Losses incurred by the Council in connection with or as a result of:
- 7.3.1 any claim (actual or threatened) or demand on or after the Transfer Date by any Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including but not limited to any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Company or the Contractor, as the case may be; and
 - 7.3.2 any failure by the Company or the Contractor, as the case may be, to comply with its obligations under Regulation 13 of the Regulations; and
 - 7.3.3 any claim (actual or threatened) or demand by any School Employee arising out of any change or proposed change in the terms and conditions of employment or working conditions of that person on or after the Transfer Date and their subsequent transfer to the Company or the Contractor, as the case may be where that School Employee would have been a Transferring

Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of the Regulations

7.4 Nothing in the indemnities given by the Council to the Company and/or the Contractor, as appropriate, will cover any liability arising as a result of:

7.4.1 a wrongful act or omission by or on behalf of the Company and/or

7.4.2 any liability to the extent contributed to as a result of 7.4.1.

7.5 The indemnity given by the Council in Clause 7.1.2 above shall not apply and the Council shall not have any liability to the Company or any Contractor (as appropriate) where the Council's failure to comply with such obligations under Regulation 13 and 14 of the Regulations arises or is due to the failure of the Company and/or Contractor (as appropriate).

8. CONDUCT OF CLAIM

8.1 In respect of indemnities given in this Agreement

8.1.1 The indemnified party shall give written notice to the indemnifying party as soon as is practicable of the details of any claim or proceedings brought against it in respect of which a claim will or may be made under the relevant indemnity;

8.1.2 subject to claims made in clause 8.1.1 above, the indemnified party (where relevant) will place the indemnifying party on record as acting on their behalf with the relevant court/tribunal;

8.1.3 The indemnifying party shall at its own expense have the exclusive right to defend, conduct and/or settle all claims and proceedings which may be brought to the extent that such claims or proceedings may be covered by the relevant indemnity;

8.1.4 Provided that where there is an impact on the indemnified party, the indemnifying party shall consult with the other party and shall at all times keep the indemnified party informed of all material matters;

8.1.5 the indemnified party shall, at the indemnifying party's expense, provide all reasonable assistance and documentation required by the indemnifying party in connection with, and act as or be joined as a defendant in any claim or proceedings brought against it;

8.1.6 the indemnifying party shall reimburse the indemnified party for all reasonable costs and expenses (including reasonable legal costs) incurred in providing such cooperation

9. PENSIONS

9.1 The parties acknowledge that the Academy is a "scheme employer" for the purposes of the LGPS Regulations and that the LGPS Regulations shall apply to the Company (as the person carrying on the business of the Academy).

9.2 The parties acknowledge that the Academy is an "employer" for the purposes of the TPS Regulations and that the TPS Regulations shall apply to the Company (as the person carrying on the business of the Academy).

9.3 The Company acknowledges that the Eligible Employees shall be, or as the case may be, remain eligible for membership of the LGPS or the TPS (as the case may be) while employed at the Academy following the Transfer Date subject to the terms of the LGPS Regulations and the TPS Regulations.

9.4 The Company shall be responsible for any LGPS deficit relating to the Eligible Employees' membership of the LGPS referable to service up to and including the Transfer Date.

9.5 The Company shall be responsible for all employer contributions payable to the LGPS and the TPS in respect of the Eligible Employees and any other sum due to the LGPS and the TPS in respect of the Eligible Employees.

9.6 The Company shall:

9.6.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any of the Eligible Employees;

9.6.2 promptly provide to the Council such documents and information which the Council may reasonably request in advance of any onward transfer of any person engaged or employed by the Company; and

9.6.3 fully co-operate with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Company.

10. EFFECTING THE TRANSFER OF THE ASSETS AND THE CONTRACTS

- 10.1 The Council and the Governing Body will assign and/or novate to the Company with effect from the Transfer Date all its rights, title and interest in and/or under or pursuant to all the Contracts which are (a) capable of assignment and/or novation without the consent of other parties to those contracts; or (b) to the extent that such contracts are not assignable without the consent of the other parties, if such consent has been obtained prior to the Transfer Date.
- 10.2 If any of the Contracts cannot be assigned and novated to the Company except by an assignment made with the consent of another party or by an agreement of novation:
- 10.2.1 this Agreement shall not constitute an assignment or an attempted assignment of the Contracts if the assignment or attempted assignment would constitute a breach of the Contracts;
- 10.2.2 after the Transfer Date the parties shall use their respective reasonable endeavours to obtain the consent of the relevant third party to the assignment, or to procure the novation, of the Contracts;
- 10.2.3 subject to the remainder of this Clause 10, unless and until the consent or novation is obtained:
- 10.2.3.1 the Council or the Governing Body (as the case may be) shall hold the same on trust for the Company and shall (at the Company's cost) do all such acts and things as the Company may reasonably require at the Company's sole cost and expense to enable due performance of the Contracts and to provide for the Company the benefits of the Contracts (including enforcement of any right of the Council or the Governing Body (as the case may be) against the other party to the Contracts arising out of its termination by the other party or otherwise);
- 10.2.3.2 the Company shall (if sub-contracting is permissible and lawful under the Contract(s) in question), as the Council's or Governing Body's (as appropriate) sub-contractor, perform all the obligations of the Council (or Governing Body) under such Contract(s) and where sub-contracting is not permissible, the Company shall perform such obligations as agent for the Council or Governing Body (as appropriate); and
- 10.2.3.3 unless and until any such contract(s) is/are assigned or novated, the Council or Governing Body (as appropriate) shall (so far as it lawfully may) at the Company's sole cost and

expense give all such assistance as the Company may reasonably require to enable the Company to enforce its rights under such contract(s), including, providing access to all relevant books, documents and other information in relation to such contract(s) as the Company may reasonably require from time to time;

- 10.2.4 if and to the extent that no such consent or novation is obtained where required within ninety (90) days of the Transfer Date the Company may by written notice to the Council or the Governing Body request the Council or the Governing Body (as the case may be) to use reasonable endeavours to procure that such contract(s) is/are terminated without liability to any of them and once terminated neither the Council or the Governing Body (as the case may be) or the Company shall have further obligation to the other relating to such contract(s).
- 10.3 Pending the Transfer Date, possession of the Assets shall be retained by the Council and/or the Governing Body (as the case may be).
- 10.4 The Council and/or the Governing Body (as the case may be) shall on or before the Transfer Date deliver to the Company any Personnel Files and Pupil Records, to the extent that they are permitted to do so by Data Protection Legislation (and the Council and the Governing Body shall use reasonable endeavours to ensure that they are permitted by Data Protection Legislation to deliver such Information to the Company).
- 10.5 The Company undertakes not to use the Personnel Files or the Pupil Records or any of the information otherwise referred to in this Clause 10 for any purposes unconnected with the operation and management of the Academy, the purposes for which such information was originally collected or any other lawful purposes.
- 10.6 The Company shall, in the case of any contracts assigned or novated under this Clause 10, assume responsibility for and indemnify and hold the Council harmless against the payment and performance of the Contracts and shall pay or perform the Contracts in accordance with practice similar to the present performance of the Council in the payment or, as the case may be, the performance of the Contracts.
- 10.7 The Council, Governing Body and the Company warrant to one another that they each have full power and authority to enter into this Agreement and carry out their obligations hereunder.
- 10.8 The Company will do all acts and/or things and/or execute all documents and/or deeds and/or communicate, cooperate, facilitate and/or provide all information necessary and/or produce the same to give effect to the provisions of this Agreement and/or to

give the other party the full benefit of this Agreement and more particularly this Clause 10.

10.9 The Council covenants and warrants that in relation to the Building Contracts until novation or assignment to the Company in accordance with this clause:

10.9.1 it shall continue to perform the employer's obligations under the Building Contracts;

10.9.2 it shall take all reasonable steps to procure the proper and timely performance by the Building Contractor(s) (as defined in the Building Contracts) of their outstanding obligations under the Building Contracts;

10.9.3 In accordance with clause 10.2.3.1 above, the Council shall at the request of the Company take such action under the Building Contracts as may reasonably be required by the Company and will pay to the Company all monies and sums received pursuant to such enforcement action as soon as reasonably practicable; and

10.9.4 as soon as practicable after the Architect/Contract Administrator or Employer (as applicable) has issued the Notice of Completion of Making Good (as those terms are defined in the Building Contracts) in accordance with the Building Contracts and/or any claims or disputes are finally resolved the Council shall as far as reasonably possible procure the novation or assignment to the Company of the Building Contracts and the Council shall as far as reasonably possible assign to the Company all collateral warranties, bonds or guarantees under the Building Contracts.

10.10 The Council shall fully indemnify the Company and keep the Company fully indemnified against all losses suffered or incurred by the Company arising out of or in connection with the performance or completion of the Building Contracts where the cause of any claims that fall under this indemnity arise prior to the novation or assignment of the Building Contracts.

10.11 From the Transfer Date until novation or assignment in accordance with clause 10.9.4, the Council and the Company shall comply with the provisions of Schedule 5 of this Agreement.

10.12 The Company will give no less than six months' notice to the Council year to exit from the Energy Contracts.

11. DEED OF USE

11.1 The Parties agree to enter into a deed of novation in the form annexed at Schedule 5 in relation to the Deed of Use to be completed simultaneously with this Agreement.

11.2 The Parties acknowledge that this Agreement is subject to and conditional upon the completion of the deed of novation in relation to the Deed of Use.

12. CONFIDENTIALITY

Each party undertakes to the other that they will keep the contents of this Agreement confidential as between the parties, except to the extent that disclosure is required by law.

13. THIRD PARTIES

No person who is not a party to this Agreement is intended to reserve a benefit under, or be entitled to enforce, this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") save that any Contractor may enjoy the benefit and enforce the terms of this Agreement in accordance with the Act. Notwithstanding this, neither the Council nor the Governing Body nor the Company require the consent of any Contractor to rescind or vary this Agreement at any time, even if that variation or rescission affects the benefits conferred on such Contractor.

14. FORCE MAJEURE

Neither party will be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control.

15. GENERAL

15.1 No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

15.2 No variation of this Agreement will be valid unless recorded in writing and signed by or on behalf of each of the parties to this Agreement.

15.3 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be unenforceable or illegal, the other provisions will remain unaffected and in force.

15.4 Nothing in this Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the

parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other party in any way.

- 15.5 Neither party will make any announcement relating to this Agreement or its subject matter without the prior written approval of the other party (such approval not to be unreasonably withheld or delayed).
- 15.6 Each party will, at the request of the other party and its own cost, do (or procure others to do) everything necessary to give the other party the full benefit of this Agreement.
- 15.7 Nothing in this agreement shall oblige the Governing Body to continue in existence where it ceases to do so as a result of the closure of the School or by operation of law or shall place any obligation or liability on the individual members of the Governing Body whether or not the Governing Body continues to exist.
- 15.8 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class or recorded delivery or by commercial courier, to each party required to receive the notice at the addresses specified by the relevant party by written notice to the other (and if no such address is specified), the address set out at the front of this Agreement.
- 15.9 Any notice shall be deemed to have been duly received:
- 15.9.1 if delivered personally, when left at the address and for the contract referred to in this clause; or
 - 15.9.2 if sent by pre-paid first class post or recorded delivery, at 9.00 a.m. on the second business day after posting; or
 - 15.9.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 15.10 A notice required to be given under this Agreement shall not be validly given if sent by email or fax.
- 15.11 This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will together constitute a single agreement.
- 15.12 Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation, negotiation and execution of this Agreement.

15.13 This Agreement and the documents referred to in it constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties.

15.14 Each of the parties acknowledge and agrees that in entering into this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not), save in the case of fraud or fraudulent misrepresentation, other than as expressly set out in this Agreement.

16. GOVERNING LAW AND JURISDICTION

16.1 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by and interpreted in accordance with the exclusive law of England and Wales.

16.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement.

17. LIABILITY

17.1 Nothing in this agreement shall be interpreted as to exclude or limit liability for fraud and/or fraudulent misrepresentation, death or personal injury or any other liability which cannot be excluded or limited at law arising as a result of any party to this Agreement's negligence.

17.2 None of the parties to this Agreement shall be liable to any other party for any special or consequential Losses (whether direct or indirect) including but not limited to:

17.2.1 loss of profits;

17.2.2 loss of goodwill;

17.2.3 loss of business opportunity; and

17.2.4 loss of anticipated savings.

17.3 Subject to the provisions of Clauses 16.1 and 16.2, the Council's liability to the Company or to any other third party with respect to any breach of contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise in relation to this Agreement shall not exceed £5 million.

SCHEDULE 1

STAFFING INFORMATION

4. **Individual terms and conditions**
 - 1.1 Copies of all current employment contracts, and all other terms and conditions of employment.
 - 1.2 A schedule comprising in respect of each employee, the following particulars:-
 - (a) full name;
 - (b) post;
 - (c) whether the employment is full or part time;
 - (d) sex;
 - (e) date of birth;
 - (f) date of commencement of service;
 - (g) notice period;
 - (h) normal retirement age;
 - (i) remuneration;
 - (j) pension;
 - (k) in respect of teachers:
 - (i) scale point or leadership group spine point;
 - (ii) assimilation point for the head teacher;
 - (iii) whether the employee is a post-threshold teacher;
 - (iv) whether the employee is a good honours graduate;
 - (v) management, recruitment, retention and/or any other allowances payable;
 - (vi) any applicable assimilation safeguarding,

and all other benefits whether contractual or otherwise.

- 1.3 Details of any recent changes of terms and conditions in relation to any employee.
- 1.4 Copies of any employee handbooks, rules and other policies, procedures, arrangements or agreements in relation to:-
- (a) redundancy procedures and payments;
 - (b) redeployment procedures;
 - (c) sickness absence and sick pay entitlements;
 - (d) equal opportunities;
 - (e) disciplinary matters;
 - (f) maternity rights;

and details of whether or not each of the above are discretionary or contractual.

1.5 Copies of any job descriptions.

1.6 Details of any practices or customs which although not written down form part of employees' terms and conditions of employment.

2. **Collective bargaining**

- 2.1 Details of the names of all trade union and other employee representatives, with the name of the trade union, the position held and how long the position was held.
- 2.2 Details of any trade union recognised by the Council / Governing Body, giving the date and details of the recognition agreement (and a copy if available), with brief details of current and historic labour relations and any pending negotiations.
- 2.3 Details of any other agreement, whether school, local or national, with any trade union or other body of employee representatives (and copies if available) including any informal recognition and procedure arrangements and other arrangements honoured by "custom and practice".
- 2.4 Details of which, if any, of the terms of any collective agreement form part of individuals' terms and conditions of employment.

3. **Disputes**

3.1 Details of any dispute with any employee whether brought under the Council / Governing Body's disciplinary or grievance procedure or otherwise and any matters which might give rise to such.

3.2 Details of any litigation threatened or pending against the Council / Governing Body, including any court, employment tribunal or arbitration claims or any matters which might give rise to such.

3.3 Details of any enquiry, correspondence or contact between the Council / Governing Body and the Commission for Racial Equality, the Equal Opportunities Commission, the Health and Safety Inspector and the Inland Revenue concerning employees.

3.4 Details of any court judgment or current employment tribunal award in respect of any employee dispute.

3.5 Details, and, if available, copies, of any warnings given to employees under the Council / Governing Body's disciplinary or capability procedures.

4. Dismissals

4.1 Details of all dismissals/resignations within the last 12 months including reasons for the dismissal/resignation.

4.2 Details of all employees recruited within the last 12 months.

5. Working Time Regulations 1998

5.1 Copies of any individual, collective and workforce agreements entered into pursuant to the Working Time Regulations.

6. Health and Safety

6.1 Details of any health and safety committees/representatives.

6.2 Details of any health and safety complaints or recommendations or claims within the last 5 years.

7. Trainees/Consultants

7.1 Details of all individuals in the undertaking working on training, work experience or similar schemes.

7.2 Details of all consultancy agreements or self-employed personnel who are or may actually be employees.

8. Absent employees

- 8.1 Details of all employees who have notified the Council / Governing Body that they are pregnant or who are currently absent on maternity leave.
- 8.2 Details of all employees on long term sick leave together with confirmation of the nature of their illness and the duration and dates of their absence(s) due to that condition.

9. Job Evaluation Scheme

- 9.1 A copy of any job evaluation scheme.

10. Contractor Employees

- 10.1 Details of any individuals employed by contractors working in the school.

11. Pension

- 11.1 A list of all occupational pension schemes applicable to the employees.
- 11.2 Details of any current or pending applications for early retirement.

SCHEDULE 2

THE CONTRACTS

All existing agreements and arrangements for the provision of services by the Council or third parties to the School/Governing Body which are intended to remain in place at the Transfer Date for the purposes of the School. Such services include:-

DETAILS OF SERVICE LEVEL AGREEMENTS WITH ENTRUST/SCG:-

Name of Supplier/Provider	Address	Service Provided	Expiry Date
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Catering Service – School Meals	30.03.17
Entrust	The Riverway Centre Riverway, Stafford ST16 3TH	Catering Service – Cash Collection	31.03.17
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Cleaning Services	31.03.17
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Finance Services	31.03.17
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Governor Services	31.03.17
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Health & Safety Service	31.03.17
Entrust	The Riverway Centre Riverway, Stafford ST16 3TH	Health Safety & Wellbeing Service	31.03.17
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Learning Technologies – LaunchPad365 ICT Support	31.03.17
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Learning Technologies – Technical Management Information Systems	31.03.19
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Learning Technologies – Entrust Broadband	31.03.17
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Learning Technologies – Policy Monitoring	31.03.17
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Learning Technologies – Transitional Services	31.03.17
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Learning Technologies – Technical	31.03.2019
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Music & Performing Arts Service	31.03.2017
Entrust	The Riverway Centre	Occupational Health Service	31.03.2017

	Riverway, Stafford, ST16 3TH		
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	HR/Payroll & Transactional Managed Service	31.03.2017
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Property Management Services – Maintenance Consultancy – Building & Engineering Surveyor	31.03.2017
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Property Management Services – Enhanced Water Hygiene Management	31.03.2017
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Property Management Services – Energy Consultancy	31.03.2017
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Property Management Services – Display Energy Certificates	31.03.2017
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	School Improvement Services (Including Early Years & SENIS)	31.03.2017
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	School's Swimming Service	31.03.2017
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	School's Library Service – Nursery, Primary & Special Schools	31.03.2017
Entrust	The Riverway Centre Riverway, Stafford, ST16 3TH	Staffordshire Broadband Services (PSN)	31.03.2017
SCC Governed Agreements			
Pass Through Service	2 Staffordshire Place, Tipping Street, Stafford, ST16 2DH	Information Governance	[1 year] – 31.03.2017
SCC	2 Staffordshire Place, Tipping Street, Stafford, ST16 2DH	Legal Services	31.03.2017
SCC	2 Staffordshire Place, Tipping Street, Stafford, ST16 2DH	Insurance Services – Sickness Absence – Support Staff	31.03.2017
SCC	2 Staffordshire Place, Tipping Street, Stafford, ST16 2DH	Insurance Services – Sickness Absence – Teaching Staff and Headteachers' Top Up	31.03.2017
SCC	Staffordshire County Council Fleet Care Unit Q A, Beacon Business Park, Weston Road, Stafford ST18 0WL	Minibus Lease	04.11.2017

CONTRACTS DEALT WITH DIRECTLY BY THE SCHOOL:-

Name of Supplier/Provider	Address	Service Provided	Expiry Date
Hedgehogs Nursery	Gemma Rochelle Hedgehogs Preschool 45 Hollingshead Avenue Newcastle, Staffordshire	Nursery Care	31.03.2017

	ST5 9DD		
Soccer Lions	Carl Robinson Soccer Lions, The Old Nursery, St. Gregory's Catholic School, Spring Garden Road, Stoke on Trent, Staffordshire ST3 2QN	Soccer Training	31.03.2017
GMS (Grounds Maintenance)	7 Mill Lane End, Blakenhall, Nantwich, Cheshire CW5 7NP	Grounds maintenance	31.03.2017
Arron Pest Control	59 Church Road, Blurton, Stoke on Trent, Staffordshire ST3 3BD	Pest Control	04.04.2017
City Security	Geoffrey Wherton 43 Brookside Drive, Blurton, Stoke on Trent, Staffordshire ST3 2AH	Keyholder	31.03.2017
PHS (1) School	Block B, Weston Industrial Estate, Caerphilly, Wales CF83 1XH	Hand driers, bins, soap, etc	31.03.2017
PHS (2) School	Block B, Weston Industrial Estate, Caerphilly, Wales CF83 1XH	Driers, bins, soap, etc	31.07.2016
PHS (3) Annex	Block B, Weston Industrial Estate, Caerphilly, Wales CF83 1XH	Driers, bins, soap, etc	31.07.2016
Insight HR	40 Hatherton Road, Cannock, Staffordshire WS11 1HG	HR services	31.08.2016
Coroner Energy	Edward Hyde Building, 38 Clarendon Road, Watford, WD17 1JW	Gas	Ongoing
Npower	P O Box 8201, Oldbury, West Midlands B69 2RH	Electricity	Ongoing
British Telecom	81 Newgate Street, London EC1A 7AJ	Telephone	Ongoing

SCHEDULE 3

THE ASSETS

1. All equipment, furniture, fixtures and fittings on the site of the School, including but not limited to the computer servers and ancillary equipment and owned by the School ("the loose plant and equipment"), subject to all contractual obligations in respect of any part of the loose plant and equipment which is the subject of any leasing, hire or hire purchase agreements listed in Schedule 2 except, for the avoidance of doubt, the Excluded Assets.
2. All rights to use the name of the School and all logos and domain names used exclusively by the School. All copyrights, database rights and other intellectual property rights owned by the Council or Governing Body (as appropriate) and used exclusively by the School to the extent that the same are capable of being assigned or sub-licensed to the Company.
3. Any un-used balance remaining from the School's budget at the Transfer Date following completion of due accounting procedures.

SCHEDULE 4

THE EXCLUDED ASSETS

The following assets are excluded from this transfer:

1. The freehold or leasehold titles to the site of the School.
2. The unpaid portion of any grants made to the School in respect of periods before the Transfer Date.
3. Any assets whose title is vested in third parties other than the Council and/or Governing Body.
4. All copyrights, database rights and other intellectual property rights owned by the Council and/or Governing Body (as appropriate) not used exclusively by the School and/or not capable of assignment or sub-licensing.
5. The servers and ancillary equipment owned by the Council pursuant to any relevant contract (including, those relating to Learning Technologies and Staffordshire Net 2 – Broadband referred to in Schedule 2).
6. (Without prejudice to the foregoing) any equipment and/or apparatus belonging to the Council or any third party and used in respect of the provision of any service pursuant to any contract.
7. Any licences (including television, phonographic performance, copyright, Educational Recording Agency and Performing Rights Society) which may be vested in the Council for the benefit of the School together with other schools or Council premises and not vested exclusively in the School.
8. Cash in hand or at bank (other than any surpluses transferred to the Company from the Council and the Governing Body pursuant to the Academy Conversions (Transfer of School Surpluses) Regulation 2010).
9. Leased mini buses (registration numbers DN62 EXD).

SCHEDULE 5

THE PARTIES' OBLIGATIONS IN RESPECT OF THE BUILDING CONTRACTS

COMPLETED WORKS

1. LICENCE TO OCCUPY

The Company grants the Council a licence for the Council, the Building Contractors and the Building Contractor's sub-contractors to enter upon and to have access with and without vehicles across such parts of the Site as the parties agree solely for the purpose of carrying out their respective obligations in connection with the Building Contracts.

2. LIAISON, CO-OPERATION AND INSPECTION

2.1 The Council shall give proper consideration to any instructions or representations made to the Council by or on behalf of the Company that relate to the subject matter of the Building Contracts and shall use reasonable endeavours to procure that all such reasonable instructions or representations are promptly dealt with to the Company's reasonable satisfaction.

2.2 The parties shall consult and regularly liaise with each other in relation to all matters relating to the performance of the Building Contracts and in particular each party will:

(a) use all reasonable endeavours to avoid unnecessary disputes and claims against the other party to this Agreement nor interfere with the rights of any other party and its servants, agents, representatives, contractors or subcontractors (of any tier) in performing its obligations under this Agreement nor in anyway hinder or prevent such other party or its servants, agents, representatives or subcontractors (of any tier) on its behalf from performing those obligations; and

(b) assist the other party (and their servants, agents, representatives or subcontractors (of any tier) in performing its obligations under this Agreement so far as is reasonably practicable.

2.3 Nothing in this clause 2 shall:

(a) interfere with the right of each party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement and in the manner in which it considers to be the most effective and efficient;

- (b) oblige any party to incur any additional cost or expense or suffer any loss of profit in excess of that required by its proper performance of its obligations under this Agreement;
- (c) relieve a party from any obligation under any indemnity contained in this Agreement or from any obligation to pay any debt properly due or payable under such documents;
- (d) fetter in any manner the discretion of the Council or the Company in performing their respective statutory duties;
- (e) oblige the Company to perform the Council's obligations under this Agreement or under the Building Contracts; or
- (f) oblige either party to waive any entitlement it may have in connection with this Agreement.

3. DEFECTS LIABILITY

- 3.1 On request by the Company at any time during each Rectification Period defined in the relevant Building Contract the Council shall inspect or procure such inspections of the works under the Building Contracts as are reasonably necessary or appropriate to identify any defects, shrinkages or other faults in those works.
- 3.2 Prior to the expiry of each Rectification Period, the Council shall prepare a list of all defects, shrinkages or other faults then apparent in the works (incorporating any defects, shrinkages or other faults in the works carried out under the relevant Building Contract notified to it by the Company) and give it to the relevant Building Contractor within the time limits specified by the Building Contract.
- 3.3 The Council shall ensure that the Building Contractors' respective obligations to remedy defects, shrinkages or other faults in their works during the relevant Rectification Period are enforced and that all such defects, shrinkages or other faults in those works are remedied promptly in accordance with the relevant Building Contract.
- 3.4 The Council shall use reasonable endeavours to procure that:
 - (a) the Architect/Contract Administrator gives at least 10 Working Days notice to the Company of its intention to inspect any of the works for the purposes of issuing a Certificate of Completion of Making Good. A representative of the Company may attend the inspection and make representations to the Council; and

(b) without fettering the discretion of the Architect/Contractor Administrator in carrying out its duties under the relevant Building Contract, the Architect/Contract Administrator takes proper consideration of any representations that are made by or on behalf of the Company when considering whether to issue the Certificate of Completion of Making Good in accordance with the terms of the relevant Building Contract.

3.5 The Council shall give or use reasonable endeavours to ensure that the Architect/Contract Administrator gives a copy of each Certificate of Completion of Making Good to the Company immediately after its issue.

4. VARIATIONS

4.1 The Council shall promptly consult with the Company prior to the agreement of any variation which may arise pursuant to the works and services being carried out under the Building Contracts and shall take proper account of the reasonable comments of the Company raised during such consultation.

4.2 The Council may make minor or safety related variations to the Building Contracts without the Company's consent provided that:

- (a) the variations are insubstantial and immaterial;
- (b) the variations are in accordance with the terms of the Building Contracts and any statutory requirements;
- (c) any substitute materials used are of an equal or better quality and suitability to those originally specified; and
- (d) the Council informs the Company of the variations promptly.

4.3 The Council shall not permit a variation to the Building Contracts which would have the effect of materially changing the design or appearance of the works or which would have the effect of reducing any of the usable floor areas of the Company's premises without the Company's prior written consent.

4.4 The Council shall consider all reasonable and proper requests by the Company for a variation to the Building Contracts but is not obliged to implement the same unless such a variation results in a cost saving or otherwise the parties agree how the proposed variation is to be funded. If such agreement is reached the Council shall instruct the relevant Building Contractor to carry out the variation in accordance with the Building Contracts.

5. INTELLECTUAL PROPERTY

- 5.1 The Council hereby grants to the Company as far as is possible and in accordance with the Building Contracts, free of charge by way of irrevocable sub-licence rights to use all Intellectual Property which are or which become rights in respect of which the Council has licence under the Building Contracts.
- 5.2 Where any Intellectual Property to which the Company reasonably requires access are not vested in the Building Contractors the Council undertakes to the Company that upon request from the Company the Council shall exercise its rights under the Building Contracts to procure the due and effective grant of a licence in favour of the Council whereupon the rights so licensed shall be deemed to be sub-licensed to the Company.
- 5.3 Where a claim is made or proceedings brought against the Council under the provisions of the Building Contracts and which arises out of any infringement of any Intellectual Property, or because the use of any materials, plant, machinery or equipment in connection with the Building Contracts infringes any rights in or to any Intellectual Property of a third party then, if such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Company otherwise than in accordance with this Agreement then the Company shall indemnify the Council at all times from and against all Losses arising as a result of such claims and proceedings.

6. INDEMNITY

- 6.1 The Council shall, subject to Clause 6.2 of this Schedule 5 be responsible for and shall release and indemnify the Company on demand from and against all liability for Losses arising from:

- (a) death and/or personal injury;
- (b) loss of or damage to property (including property belonging to the Company or for which it is responsible);
- (c) third party actions, claims and/or demands including costs, charges and expenses (including legal expenses on an indemnity basis) arising as a result thereof brought against the Company;

which may arise out of or in consequence of:

- (d) the carrying out of the Building Contracts by the Building Contractor or the performance or non-performance by any of the Building Contractors of their respective obligations under the Building Contracts;
- (e) the presence of the Council or the Building Contractor at the Site ;

- (f) the performance or non-performance of this Agreement by the Council
- (g) any breach of statutory duty by the Council.

6.2 The Council shall not be responsible for or be obliged to indemnify the Company:

- (a) for any matter referred to in Clause 6.1 of this Schedule 5 that arises as a direct result of the Council acting on any written instruction issued by the Company.
- (b) for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Company (other than to the extent such negligence or wilful misconduct would not have occurred but for the breach by the Council of its obligations under this Agreement) or by the breach by the Company of its obligations under this Agreement;
- (c) where the claim arises from any matter concerning the carrying out of works by the Building Contractors or the performance or non-performance by the Building Contractors of their respective obligations under the Building Contracts or the presence of the Building Contractors at the Site to the extent that the Council having used all reasonable endeavours to do so is unable to claim indemnity or (notwithstanding being so entitled to claim) and having used its reasonable endeavours is unsuccessful in claiming indemnity from the relevant Building Contractor.

6.3 The Company shall indemnify and keep the Council indemnified at all times from and against liability for Losses arising from:

- (a) any claim for or in respect of death and/or personal injury of any employee of or person engaged by the Council or the Building Contractors;
- (b) any physical loss or damage to the Building Contractor's property or equipment on the Site;
- (c) any breach of statutory duty for which the Council is held liable;
- (d) any third party actions, claims and/or demands including costs, charges and expenses (including legal expenses on an indemnity basis) arising in consequence thereof brought against the Council or the Building Contractors;

which may arise out of or in consequence of the performance or non-performance of this Agreement by the Company or any negligent or wilful act or omission of the Company which in each case is a breach of the Company's obligations under this

Agreement other than to the extent that such performance or non-performance or negligent or wilful misconduct would not have occurred but for a breach by the Council of its obligations under this Agreement.

- 6.4 The Company shall have no liability to the Council pursuant to this Agreement including this clause 6.4 to the extent that any Losses are covered by the Council's insurance pursuant to this Agreement, the Building Contractor or any other contract to which the Council is a party and are recovered under such insurance, or are recovered pursuant to any other contract to which the Council is a party.

7. INFORMATION

- 7.1 The Company acknowledges that the Building Contractors may require the Council to provide to the Building Contractors from time to time information and documents to facilitate performance of the Building Contracts. The Company agrees that it shall upon reasonable request and within a reasonable time stated in the request (which timescale will be considered reasonable, without prejudice to other reasons, where it is required in order to comply with timescales placed on the Council under the Building Contracts and where the request has been made as soon as reasonably practicable by the Council) provide such information, documents and any records in the possession of the Company and which the Company is lawfully entitled to disclose that is reasonably required by the Council to facilitate the effective operation of the Building Contracts or to satisfy any obligation upon the Council pursuant to the terms of the Building Contracts.

- 7.2 The Council agrees that it shall promptly provide to the Company upon request being made of it by the Company copies or originals of all information in its possession which has been provided by the Building Contractors pursuant the Building Contracts where in all such cases the information is reasonably required by the Company.

8. TERMINATION ON THE COUNCIL'S DEFAULT

- 8.1 The Company acknowledges that the rights of a Building Contractor to terminate exist in the event that the Council defaults under a Building Contract. If the Contractor threatens such termination the parties to this Agreement shall consult promptly with a view to taking such action as is appropriate particularly having regard to the rights available to the Council to remedy any breach that has arisen.

- 8.2 The Council shall not do or omit to do anything that would entitle a Building Contractor to regard the relevant Building Contract as terminated by breach.

9. BUILDING CONTRACT

The parties agree that where under Schedule 5 the Council agrees to carry out or procure the carrying out of an action pursuant to a Building Contract that obligation shall

be limited to the extent of the Council's and/or the Building Contractor's rights and obligations under the relevant Building Contract.

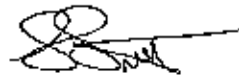
SIGNED on behalf of STAFFORDSHIRE
COUNTY COUNCIL

.....
Authorised Signatory

SIGNED by Simon Smart)

Duly authorised on behalf of the)

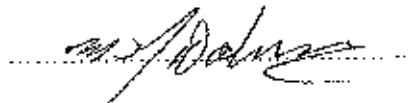
GOVERNING BODY


.....


SIGNED by M. Dolman)

Duly authorised on behalf of

COMPANY


.....

SIGNED on behalf of
STAFFORDSHIRE COUNTY COUNCIL.



.....
Authorised Signatory

SIGNED by _____)

Duly authorised on behalf of the)

GOVERNING BODY OF
CHESTERTON PRIMARY SCHOOL

.....

SIGNED by _____)

Duly authorised on behalf of

THE CHESTERTON ACADEMY
TRUST

.....