

DATED 28th August 2015

(1) STAFFORDSHIRE COUNTY COUNCIL

(2) THE GOVERNING BODY OF HOLLINSCLOUGH CE (VA) PRIMARY SCHOOL

(3) BURSLEY MULTI ACADEMY TRUST

TRANSFER AGREEMENT
Re: Hollinsclough CE (VA) Primary School,
Hollinsclough, Buxton, Staffordshire

 **Staffordshire Legal Services**
From the Public Sector, for the Public Sector

John Tradewell
Director of Democracy, Law & Transformation
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THIS AGREEMENT is made

28th August

2015

BETWEEN:

- (1) **STAFFORDSHIRE COUNTY COUNCIL** of County Buildings, Martin Street, Stafford, ST16 2LH (the "Council");
- (2) **THE GOVERNING BODY OF HOLLINSCLOUGH CE (VA) Primary School** of Hollinsclough, Buxton, Staffordshire SK17 0RH (the "Governing Body");
- (3) **BURSLEY MULTI ACADEMY TRUST** a company limited by guarantee registered in England and Wales (company number 07972070) whose registered office is at Bursley Academy, Bursley Way, Bradwell, Newcastle, Staffordshire, ST5 8JQ (the "Company").

WHEREAS

- (A) The School will close and the Company will, from the Transfer Date, operate the Academy on the same site as the School.
- (B) The freehold of the site of the School is owned by the trustees of the Lichfield Diocesan Board of Education ("the Diocese") and on the Transfer Date the Diocese will enter into an agreement with the Company in respect 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 Hollinsclough Church of England Academy;
- "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;
- "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 (irrespective of whether the Council or the Governing Body is a signatory to the same); and
- (iii) those contracts referred to in Schedule 2

and where such contract was entered into by the Council and relates to other schools operated by the Council as well as the School then only such part of that contract as relates to the School;

"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;

"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"

means the information which the Council and/or

Information"	Governing Body 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;
"Excluded Assets"	means the assets described 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"	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, trade marks, 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 Local Government Pension Scheme Regulations 2013 as amended, and the LGPS (Transitional Provisions, Savings and Amendment Regulations) 2014
"LGPS Regulations"	means the Local Government Pension Scheme Regulations 2013 as amended, or replaced from time to time;

“Loss”	means all costs, claims, liabilities and expenses (including reasonable legal expenses) relating to the operation of the School and “Losses” shall be construed accordingly;
“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 or re-enacted from time to time);
“School”	means the Council maintained education establishment known as Hollinsclough CE(VA) Primary School, operated from the Site(s) ;
“School Employees”	means any employees of the Council or of the Governing Body or of any other 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;
“School Fund”	means the school fund account held with TSB Wilmslow with the account number: 00851233 and sort code: 30-99-65;
“Site”	means the premises at Hollinsclough, Buxton, Staffordshire, SK17 0RH from which the School is operated as at the Transfer Date;
“Staffing Information”	means the information held by the Council and/or Governing Body, 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 1st September 2015 ;
"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**
- 2.1** This Agreement is conditional upon the Funding Agreements being signed and completed by the Company and the Secretary of State on or before the Transfer Date.

2.2 If the Funding Agreements are not signed and completed, this Agreement shall immediately cease to have any force and/or effect.

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 and 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 appropriate) 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 To the extent that it is not the owner of any of the items being transferred in Clause 3.3 above, the Council and/or Governing Body 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, save for any Encumbrance of which 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 and shall become entitled to the benefits of the Council and/or the Governing Body 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 Governing Body 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 Governing Body 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 within 28 days of receipt of a written request to do so.

4.3 Subject at all times to Clause 4.5, 4.6 and 4.7 the Governing Body warrants, and in respect of any School Employee employed by the Council the Council also warrants so far as it is aware and so far as is reasonably practicable and possible as at the Transfer Date:

4.3.1 that the information in the Employee Schedule shall be complete and accurate and kept up-to-date up;

4.3.2 that neither the Governing Body is in material breach of the contract of employment of any of the School Employees nor is any School Employee in material breach of his contract of employment;

4.3.3 that none of the School Employees have given or received notice of termination of employment nor are any of the School Employees the subject of any material disciplinary action nor is any School Employee engaged in any grievance procedure;

4.3.4 that it is not engaged in relation to any School Employee 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;

4.3.5 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

4.3.6 that as at the Transfer Date all Transferring Employees will have been checked against the Children's Barred List and checked through the Disclosure & Barring Service and all other checks required by law.

4.4 The Governing Body undertakes to the Company, and the Council undertakes in respect of any School Employees employed by the Council, that up to and including the Transfer Date that:

4.4.1 the Governing Body 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 respective trade union(s) or other employee representatives;

4.4.2 notwithstanding that which is set out in the Employee Liability Information, the Governing Body, shall not, without the prior written consent of the Company:

4.4.2.1 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 Governing Body 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);

4.4.2.2 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);

4.4.2.3 within 28 working days prior to the Transfer Date employ or assign any person to the School who would or might

as a consequence of such employment or assignment become a Transferring Employee;

and the Governing Body, shall, subject to the provisions of Clause 8, indemnify the Company from and against all Losses incurred by the Company in connection with or as a result of a breach of their obligations under this clause,

4.5 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 evidenced by the Disclosure Bundle.

4.6 The Council makes and gives no warranty in respect of clauses 4.3.2, 4.3.3 and/or 4.3.5 of this Agreement in relation to any actions or the Governing Body which could affect the accuracy of the information the Council holds on the School Employees and is an act that the Council were not a party to or aware of.

4.7 The Council makes and gives no warranty in respect of clause 4.3.6 of this Agreement in relation to any School Employees for whom applications to the Disclosure & Barring Service have been made by the Governing Body but no response has been received prior to the Transfer Date.

5. APPORTIONMENTS

5.1 The Governing Body shall:

5.1.1 be responsible for all emoluments and/or outgoings in respect of the School Employees employed by the Governing Body (including all remuneration, benefits, bonuses, rewards, wages, commission, premiums, subscriptions, PAYE and employer's national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to the Transfer Date; and

5.1.2 will 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 employee national insurance contributions and pension contributions) which are attributable in whole or in part to the period starting with and including the Transfer Date and following the Transfer Date, and will fully indemnify and keep indemnified the Governing Body and/or the Council against any and all Losses, damages, awards threatened claims, orders and settlements in respect of such responsibilities.

5.3 The Governing Body 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 prior to and up to and including 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 following the Transfer Date which relate to the running performance and/or operation of the School.

5.5 All Historic Liabilities shall belong to, and be paid and discharged by the Governing Body or as the case may be the Council and the Governing Body undertakes to indemnify and keep the Company 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 to indemnify and keep the Governing Body and the Council 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 Governing Body and (in respect of any School Employee employed by the Council) 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 Governing Body shall not be in breach of their obligations under Regulations 13 and 14 or the Regulations and/or Clause 6.2 above where the Governing Body and/or the Council is unable to comply as a result of a failure of the Company and/or any Contractor (as appropriate) to comply with their duties under Regulation 13 of the Regulation.

7. INDEMNITIES

- 7.1** The Governing Body shall indemnify the Company (either for itself or for or on behalf of any other person to whom the Transferring Employee or any liability relating to them has transferred or is alleged to have transferred) against all Losses incurred by the Company following the Transfer Date in connection with or as a direct result of:
- 7.1.1** any claim or demand 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, 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, personal injury, a protective award or a claim or demand of any other nature, in each case arising directly from any act, fault or omission of the Governing Body in respect of any School Employee or former School Employee; which took place or was omitted or arose from circumstances which took place during the period prior to the Transfer Date;
 - 7.1.2** subject at all times to Clause 7.4 below any failure by the Governing Body or any other employer of the School Employees to comply with its obligations under Regulations 13 and 14 of the Regulations, or any award of compensation under Regulation 15 of the Regulations

save where such failure arises from the failure of the Company or any Contractor to comply with its duties under Regulation 13 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 or the Governing Body or any other employer of the School Employees to comply with any legal obligation to such trade union, body or person; and/or

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 Employees has transferred to the Company or a Contractor 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 notice, as soon as it becomes aware or ought reasonably to have been aware of the Deemed Transfer before the Company (or the Contractor as appropriate) 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 (or the Contractor as appropriate) in respect of the Deemed Transfer will be expressly agreed in writing in advance between the Council and the Company (or the Contractor as appropriate) before any such action is taken;

7.2.3 the Council (in respect of any person whose employment transfers or is alleged to transfer to the Company) shall indemnify and keep indemnified the Company (both for itself and any Contractor) against all direct Losses which the Company (or, where applicable, the Contractor) incurs in respect of the employment of that person from and including the Transfer Date up to the date of any dismissal and any other claim brought by or on behalf of that person.

7.3 The Company shall (in respect of Transferring Employees employed by the Company), and shall use reasonable endeavours to procure that any Contractor shall (in respect of Transferring Employees employed by the Contractor), indemnify the Governing Body or, in respect of any School Employee employed by the Council, the Council against all direct Losses incurred by that party in connection with or as a result of:

7.3.1 any claim 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;

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/or

7.3.3 any claim 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 The Indemnity given by the Governing Body and/or the Council in Clause 7.1.2 above shall not apply and the Governing Body shall not have any liability to the Company or any Contractor (as appropriate) where the 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 any Contractor (as appropriate) to comply with its duties under Regulation 13 of the Regulations.

7.5 Nothing in the indemnities given by the Council to the Company or the Contractor (as appropriate) shall cover: any liability arising directly as a result of; or any liability to the extent contributed to as a wrongful act or omission and/or a breach of this Agreement by or on behalf of the Company.

8. CONDUCT OF CLAIM

8.1 In respect of the 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 will:

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 upon request 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.

9.7 The Company acknowledges that the appropriate administering authority for the employees of the Company shall be the administering authority within whose local government area the relevant Academy is located in accordance with the LGPS Regulations.

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);¹

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 the Governing Body shall on or before the Transfer Date deliver to the Company the Personnel Files and the Pupil Records, to the extent that they are permitted to do so by Data Protection Legislation (and both 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.

11. 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.

12. 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.

13. 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.

14. GENERAL

14.1 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.

14.2 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.

14.3 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.

14.4 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.

14.5 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).

- 14.6** 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.
- 14.7** 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.
- 14.8** 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.
- 14.9** Any notice shall be deemed to have been duly received:
- 14.9.1 if delivered personally, when left at the address and for the contract referred to in this clause; or
- 14.9.2 if sent by pre-paid first class post or recorded delivery, at 9.00 a.m. on the second business day after posting; or
- 14.9.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 14.10** A notice required to be given under this Agreement shall not be validly given if sent by email or fax.
- 14.11** 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.
- 14.12** Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation, negotiation and execution of this Agreement.
- 14.13** This Agreement 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.
- 14.14** 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.
- 15. GOVERNING LAW AND JURISDICTION**
- 15.1** 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.
- 15.2** 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.
- 16 LIABILITY**

- 16.1** 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.
- 16.2** 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:
- 16.2.1** loss of profits;
 - 16.2.2** loss of goodwill;
 - 16.2.3** loss of business opportunity; and
 - 16.2.4** loss of anticipated savings.
- 16.3** 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

- 1. 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/Department

Name of supplier	Address	Service Provided	Expiry Date
Entrust	Kingston Centre, Fairway, Stafford ST16 3TW	Finance Services	1 Year - 31 March 2016
Entrust	Kingston Centre, Fairway, Stafford ST16 3TW	HR Advisory Service	1 Year 31 March 2016
Entrust	Kingston Centre, Fairway, Stafford ST16 3TW	Health and Safety Service	1 Year 31 March 2016
Entrust	Kingston Centre, Fairway, Stafford ST16 3TW	Information Governance	1 Year 31 March 2016
Entrust	Kingston Centre, Fairway, Stafford ST16 3TW	Learning Technologies – Technical - MIS	3 Years 31 March 2016
Entrust	Kingston Centre, Fairway, Stafford ST16 3TW	Legal Services	1 Year 31 March 2016
Entrust	Kingston Centre, Fairway, Stafford ST16 3TW	Occupational Health	1 Year 31 March 2016
Entrust	Kingston Centre, Fairway, Stafford ST16 3TW	Payroll and Transactional Managed Service	1 Year 31 March 2016
Entrust	Kingston Centre, Fairway, Stafford ST16 3TW	Staffordshire Broadband Services (PSN)	4 Years 31 March 2016
SCC Governed Agreements			
SCC	1 Staffordshire Place, C/o Wedgwood Building, Tipping Street, Stafford ST16 2DH	Insurance Service - Sickness Absence Support Staff	1 Year 31 March 2016
SCC	1 Staffordshire Place, C/o Wedgwood Building, Tipping Street, Stafford ST16 2DH	Insurance Service – Sickness Absence Support Teaching Staff and Headteacher's Top-up	1 Year 31 March 2016

CONTRACTS WITH OTHER PROVIDERS

Name of Supplier	Purpose of Contract
Trinity	Fire alarm maintenance
Chubb	Intruder alarm/fire extinguishers
Ford-Mainwaring	Oil boiler servicing
Site Electrical	Sewerage treatment plant
Trinity	Emergency lighting
IWS	Water hygiene risk assessment
Hertel	Water inspections
Speed Electrical	Fixed electrical testing
Calbarrie	PAT testing
PHS	Sanitary disposal
SportsSafeUK	P.E. equipment inspection
Ricoh	Photocopier
Stone Computers	Microsoft Licence

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.
- 4.** The School Fund.


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, or any amounts referred to paragraph 3 in Schedule 3.
9. The marquee which is jointly owned by the PTA and The Manifold Valley Show Society.

**SIGNED on behalf of
STAFFORDSHIRE COUNTY COUNCIL**



.....

Authorised Signatory

SIGNED by _____)

Duly authorised on behalf of the)

GOVERNING BODY

.....

SIGNED by _____)

Duly authorised on behalf of

COMPANY

.....