

DATED _____ **2016**

(1) LEICESTERSHIRE COUNTY COUNCIL

(2) THE GOVERNING BODY OF FERNVALE PRIMARY SCHOOL

(3) OADBY, WIGSTON AND LEICESTERSHIRE SCHOOLS ACADEMY TRUST

COMMERCIAL TRANSFER AGREEMENT
Re: Fernvale Primary School

BETWEEN:

- (1) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicester LE3 8RA (the "Council");
- (2) **THE GOVERNING BODY OF FERNSVALE PRIMARY SCHOOL** of Somerby Road, Thurnby Leicester LE7 9PR (the "Governing Body");
- (3) **OADBY, WIGSTON AND LEICESTERSHIRE SCHOOLS ACADEMY TRUST** a company limited by guarantee registered in England and Wales (company number 8537140) whose registered office is at Langmoor Primary School, Kenilworth Drive, Oadby, Leicestershire LE2 5HS (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; and
- (B) The freehold of the 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 Fernvale Primary School;

"Artwork/Artworks" means any works of art on loan to the School from the Council's Heritage Arts Service and/or Artworks Loan Collection and/or any other of the Council's associated departments or collections in the School's possession at the time of conversion and (for the avoidance of doubt) Artwork(s) does not include School Artwork;

"Assets" means all property, undertaking, rights 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 the School including but not limited to those listed in Schedule 3, but excluding the Excluded Assets;

"Barred Lists " means the list of persons prohibited from teaching etc under sections 141C and 142 of the Education Act 2002; the list of individuals considered unsuitable to work with children kept under section 1 of the Protection of Children Act 1999; and /or the children's barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006;

“Building Contracts”	means those contracts means the roofing works £95,000 and fire system works £25,000 order number and dates to follow;
[“Concept Document”	means the concept document for the s106 Funded Works (Project Name: [DOES THIS EXIST?]) approved [DATE];]
“Contractor”	means a contractor providing services to the Company to whom the contract of employment of any Transferring Employee is transferred pursuant to the Regulations on or after the Transfer Date;
“Contracts”	<p>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) [excluding Building Contracts] for the purpose of operating the School in the ordinary course of business which are still in force at the Transfer Date, including but not limited to:</p> <ul style="list-style-type: none"> (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) those contracts listed in Schedule 2 (true and accurate copies of which have been disclosed to the Company prior to the Transfer Date);
"Data Protection Legislation"	means the Data Protection Act 1998 ("DPA"), 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;
"Directive"	means the Acquired Rights Directive (Council Directive 2001/23/EC) on the approximation of the laws of the Member States relating to safeguarding of employees rights in the event of transfers of undertakings or businesses (as amended, re-enacted or extended from time to time);
“Early Retirement Strain”	means in respect of Eligible Employees means a capital contribution payable to the LGPS in respect of a retiring employee aged over 55 but under 65 years

	but for the avoidance of doubt this shall not relate to the Early Retirement Strain payments made in connection with former employees of the School;
“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 a transferor is obliged to notify to a transferee 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;
"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;
“Excluded Liabilities”	means all Losses not expressly transferred to the Company pursuant to the terms of this Agreement save where the Company has express or constructive knowledge of the same;
"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;
“Loss”	means all costs, claims, liabilities and expenses (including reasonable legal expenses) and “Losses” shall be construed accordingly;
“the LGPS”	means a 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;
“the LGPS Regulations”	means the Local Government Pension Scheme (Administration) Regulations 2008 (SI2008/239) and shall include any regulations amending or replacing the regulations from time to time;
“Outgoings”	all present and future costs, liabilities, outgoing rates

taxes duties charges assessments impositions and levies whatsoever (whether parliamentary local or of any other description including capital or non-recurring and including any novel expenses);

“the Personnel Files”

means in respect of the Transferring Employees 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;

“the Pupil Records”

means the following records and information held by the Council or the Governing Body in respect of the pupils at the School who will or who are likely to become pupils at the Academy: all individual pupil files and records including educational records, medical and child protection records, whether held in paper or electronic form;

“the Regulations”

means The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time);

“the School”

means Fernvale Primary School

“s106 Funded Works”

means the expansion of classrooms at the school to such specification as agreed in the [Concept Document];

“s106 Funding”

means the Section 106 funding due from the developer ([DETAIL OF DEVELOPER]) to the sum of up to £400,000.00, with a minimum of £250,000.00 set aside for the purpose of the s106 Funded Works;

“School Artwork(s)”

means;

(i) any sculpture or other fixed work of art that was erected at the School as part of the original build unless there was a contrary intention at the time; and

(ii) any work of art purchased by the School ; and

(iii) any work of art gifted to the School; and

(iv) any work of art loaned to the School by parties other than the Council save where any work of art falls within the definition of Artwork(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;
“Staffing Information”		means, in respect of the School Employees, the information listed in Schedule 1;
“the TPA”		means the Teachers’ Pension Agency;
“the TPS”		the teachers’ pension scheme as defined in the TPS Regulations or any successor thereto;
“the TPS Regulations”		means the Teachers’ Pensions Regulations 2010 (SI 2010/990) as from time to time amended;
“Transfer Date”		means the date specified in the Funding Agreement on which the Academy will open;
“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 Requirements”	Capital	means such cash at the bank of the School to enable the Company to (a) fulfil its working capital requirements for the three months following the Transfer Date; and (b) make any scheduled payments in connection with the Contracts for the three months following the Transfer Date.

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 of 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 upon the Funding Agreement being signed by the Company and the Secretary of State on or before the Transfer Date. In the event that the Funding Agreement is not signed by such date, this Agreement shall cease to have effect.

3. **OPERATION OF THE REGULATIONS**

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 that the contracts of employment made between the current employer and the Transferring Employees (save insofar as such contracts relate to benefits for old age, invalidity or survivors under any occupational pension scheme) shall have effect from and after the Transfer Date as if originally made between the Company or (as the case may be) a Contractor and the Transferring Employees.

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 on or before the Transfer Date to the extent lawfully permitted provide the Company with the Employee Schedule and Staffing Information.

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

4.3 The Council warrants:

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

4.3.2 that neither it (nor, as far as it is aware, any other employer of a School Employee) is in material breach of the contract of employment of any of the School Employees nor, as far as it is aware, 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 except where previously notified to the Governing Body of the School; and
 - 4.3.4 that neither it (nor, as far as it is aware, any other employer of a School Employee) is 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 by the Transfer Date all Disclosure and Barring Service (formerly Criminal Records Bureau) checks (including checks of the Barred Lists) required by law, together with all other checks that may be required by law, have been carried out in relation to all Transferring Employees.
- 4.4 The Council undertakes to the Company that during the period from the date of this Agreement up to and including the Transfer Date:
- 4.4.1 the Council and 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 trade union or other employee representatives;
 - 4.4.2 the Council and the Governing Body, shall not, and shall procure that any other employer of the School Employees shall not, without the prior written consent of the Company:
 - (a) 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 where any such amendment or variation is not in any way related to the transfer to the Company);
 - (b) 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);
 - (c) 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 Council shall 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.

5. APPORTIONMENTS

5.1 The Council shall 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 to the period up to but not including the Transfer Date, and will indemnify the Company (both for itself and any Contractor) against all Losses incurred by the Company or any Contractor in respect of the same.

5.2 The Company shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from (and including) the Transfer Date, and will indemnify the Council against Losses in respect of the same.

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, save where the Council is unable to do so as a result of the failure of the Company and/or any Contractor to comply with their duties under Regulation 13 of the Regulations.

7. INDEMNITIES

7.1 The Council 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 in connection with or as a 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 or indirectly from any act, fault or omission of the employer in respect of any School Employee or former School Employee, or any claim relating to the period on and before the Transfer Date (and for the avoidance of doubt, this indemnity shall apply in respect of all Losses incurred by the beneficiary of this indemnity in respect of the period after the Transfer Date where the claim (such as, without limitation, a claim for equal pay) arises out of circumstances which arose on or before the Transfer Date);

- 7.1.2 any failure by the Council 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 (or other employees of the Council or Governing Body) arising from or connected with any failure by the Council or any other employer of the School Employees to comply with any legal obligation to such trade union, body or person; and/or
 - 7.1.4 any claim by any person (other than a Transferring Employee) in respect of which the Company or any Contractor incurs or 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 Employees has transferred to the Company or a Contractor pursuant to the Directive or the Regulations:
 - 7.2.1 the Company (or, where applicable, the Contractor) may by 4pm on the fifteenth (15th) working day following but excluding the day upon which it becomes aware of that allegation or finding, dismiss the employee with immediate effect; and
 - 7.2.2 the Council shall indemnify and keep indemnified the Company (both for itself and any Contractor) against all Losses which the Company (or, where applicable, the Contractor) may suffer or incur in respect of that dismissal and the employment of that person up to the date of the 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 Council against all Losses incurred by the Council (provided always that the Company shall not be liable for any liability of the Contractor under this clause 7.3) in connection with or as a result of:
 - 7.3.1 any claim or demand by any Transferring 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, 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, in respect of any Transferring Employee on or after the Transfer Date;

- 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 their transfer to the Company or the Contractor, as the case may be, on the Transfer Date, 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 on or before the Transfer Date as a result of any such changes .

8. PENSIONS

- 8.1 The parties acknowledge that the Company 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).
- 8.2 The parties acknowledge that the Company 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).
- 8.3 The Company acknowledges that the Eligible Employees shall be, or (as the case may be) shall 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.
- 8.4 The Company shall be responsible for any LGPS deficit relating to the Eligible Employees’ membership of the LGPS referable to all service whether before or after the Transfer Date and shall subject to clause 8.5, also be responsible for any LGPS deficit relating to individuals who were previously employed at the School in connection with their service at the School. The said deficit shall be transferred to the Company on the Transfer Date, such deficit to be calculated by the LGPS actuary based on the difference between assets and liabilities transferred on the Transfer Date . Any deficit arising after the Transfer Date will be the responsibility of the Company.
- 8.5 In the event that either
 - 8.5.1 the Council adopts a different policy or practice in relation to any deficit in respect of any school converting to an academy after the date of this Agreement; or
 - 8.5.2 Parliament legislates to provide that the liability for any deficit is to be the responsibility of the Council;then the responsibility for such deficit (other than any deficit relating to Eligible Employees) shall be the responsibility of the Council and the Company shall have no liability in respect thereof.
- 8.6 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. For the avoidance of doubt , the

employer's contribution rate payable by the Company to the LGPS will be 21.3% from the Transfer Date until 31 March 2017 and no other sum (apart from Early Retirement Strain) will be payable to the LGPS during this period.

8.7 The Company shall:

8.7.1 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;

8.7.2 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

8.7.3 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. THE ASSETS AND THE CONTRACTS

9.1 On the Transfer Date the Council and/or the Governing Body (as applicable) will transfer (or to the extent that it is not the owner thereof shall 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 which has been fully and accurately disclosed to the Company prior to the Transfer Date.

9.2 The Excluded Assets, Excluded Contracts and the Excluded Liabilities shall be excluded from the transfer under this Agreement.

9.3 Such right of title as the Governing Body or the Council have to the Assets and risk in the Assets shall pass to the Company on the Transfer Date provided always that the Council and the Governing Body will have no liability to the Company in relation to the condition of such assets.

9.4 The Company shall have responsibility for the operation of the Academy from the Transfer Date and the Council and the Governing Body shall have no further obligation in terms of the operation of the School from the Transfer Date.

9.5 Subject to clause 9.6 below the Council and/or Governing Body (as applicable) with effect from the Transfer Date assigns to the Company all the Contracts:

9.5.1 which are capable of assignment without the consent of other parties to those Contracts; or

9.5.2 where consent is required to assignment and such consent has been received.

9.6 This is covered by 9.5 If any of the Contracts cannot be transferred to the Company except by an assignment made with the consent of another party or by an agreement of novation:

- 9.6.1 this Agreement shall not constitute an assignment or an attempted assignment of the Contract if the assignment or attempted assignment would constitute a breach of the Contract;
- 9.6.2 after the Transfer Date the parties shall use their respective reasonable endeavours to obtain the consent of the other party to the assignment and then to assign, or to procure the novation, of the Contract; and
- 9.6.3 until the consent or novation is obtained:
- (a) 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 to enable due performance of the Contract and to provide for the Company the benefits of the Contract (including enforcement of any right of the Council or the Governing Body (as the case may be) against the other party to the Contract arising out of its termination by the other party or otherwise);
 - (b) the Company shall (if sub-contracting is permissible and lawful under the Contract 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 and where sub-contracting is not permissible, the Company shall perform such obligations as agent for the Council or Governing Body (as appropriate); and
 - (c) unless and until any such Contract is assigned or novated, the Council or Governing Body (as appropriate) shall (so far as it lawfully may) at the Company's cost give all such assistance as the Company may reasonably require to enable the Company to enforce its rights under such Contract, including, providing access to all relevant books, documents and other information in relation to such Contract as the Company may reasonably require from time to time.
- 9.7 Pending the Transfer Date, possession of the Assets shall be retained by the Council and/or the Governing Body (as the case may be).
- 9.8 The Council warrants that, so far as it is aware (having made reasonable enquiries of its officers), that it has not entered into any contract or arrangement on behalf of the School which either:
- 9.8.1 has not been executed by the Governing Body;
 - 9.8.2 the Governing Body does not have express or constructive knowledge of; or
 - 9.8.3 is not listed as a Contract in Schedule 2.
- 9.9 The Council shall not be liable for any Loss suffered by the Company resulting from any action taken or contracts or arrangements entered into by the Governing Body prior to the Transfer Date without the knowledge or consent of the Council.

- 9.10 The Council makes no warranty as to the balance of the School bank account in relation to the Working Capital Requirements and shall not be liable if the balance of the School bank account on or after the Transfer Date is insufficient for the Company to meet its obligations.
- 9.11 The School bank account shall be made available to the Company for the three months following the Transfer Date for the purposes of accessing the Working Capital Requirements but shall continue to be held by the Council.
- 9.12 All receipts relating to the Assets and the Contracts and all Losses and Outgoings incurred or payable in relation to the Assets and the Contracts up to the Transfer Date ("**Historic Liabilities**") shall belong to, and be paid and discharged by, the Council or, as the case may be, the Governing Body (whichever is currently responsible) and the Council or the Governing Body as the case may be undertakes to indemnify and keep the Company and the Governing Body, or the Council in the case of an undertaking by the Governing Body, indemnified against any Historic Liabilities.
- 9.13 All receipts relating to the Assets and the Contracts and all Losses and Outgoings incurred or payable in relation to the Assets and the Contracts as from and including the Transfer Date ("**Future Liabilities**") shall belong to, and be paid and discharged by the Company and the Company undertakes to indemnify and keep the Council and the Governing Body indemnified against any Future Liabilities.
- 9.14 The Company agrees that, following the Transfer Date, it shall provide the Council with sufficient information, as reasonably requested by the Council, to enable the Council to accurately determine and discharge any Historic Liabilities (including, without limitation, any payments relating to the School's accounts). In the event that the Council makes an underpayment or overpayment in relation to any Historic Liabilities (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).
- 9.15 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).
- 9.16 The Company undertakes not to use the Personnel Files or the Pupil Records 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.
- 9.17 The Council agrees that where additional school places are required after the Transfer Date in the local area as a result of development, the Council will continue to ensure that such school places are provided at the most appropriate school (including an academy) in the area and that any funding available under section 106 of the Town and Country Planning Act 1990 will be allocated accordingly, whether

the funding arises under a section 106 agreement, or any successor agreement, entered into before or after the Transfer Date.

- 9.18 So often as occasion requires each party shall provide to the other upon reasonable request any data and information within its possession to comply with its statutory obligations and statutory reporting duties as they relate to the School or Academy and in a form agreed between the parties (both parties acting reasonably) which the requesting party requires.
- 9.19 [In any case where the Building Contracts have not reached practical completion or are still within the rectification period, defects liability period or maintenance period or where there are professional services still to perform the Building Contracts shall not be assigned and the Council shall hold the benefits of the Building Contracts on trust for the Company until the issue of the certificate of making good defects or equivalent of the building works or completion of professional services and the following clauses shall apply:
- 9.19.1 the Council shall continue to perform the employer's obligations under the Building Contracts;
 - 9.19.2 the Council shall procure that the contract administrator shall provide 5 business days prior written notice to the Company of the contract administrator's intention to issue any certificate of practical completion and making good defects and the Council shall procure that the contract administrator shall take all due and proper regard of reasonable representations made by the Company in relation to such certificate provided that such representations are provided within 5 business days of such notice;
 - 9.19.3 the Council shall at the request and expense 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
 - 9.19.4 upon the issue of the certificate of making good defects or equivalent of the building works or completion of professional services, the Council shall assign the Building Contracts to the Company and clauses 9.5 and 9.6 shall apply.
- 9.20 The Council agrees that the School has been selected to have the Future Works carried out and that the School has been selected to receive the s106 Funding. In respect of the Future Works and the s106 Funded Works;
- 9.20.1 the Council will procure the design, carrying out and completion of the Future Works by [September 2016], at the Council's cost, and a budget of around £262,530.95 has been agreed;
 - 9.20.2 the Council will procure the design, carrying out and completion of the s106 Funded Works within the budget determined by the s106 Funding;
 - 9.20.3 the Council will engage a contractor and consultants on terms and conditions to be approved by the Company (such approval not to be unreasonably withheld or delayed) and the Council shall deliver executed collateral warranties from the contractor and the consultants in forms institutionally acceptable to the Company;

- 9.20.4 the Council will procure that the works are designed, carried out and completed by competent and qualified contractors and/or consultants, with reasonable skill and care and in a good and workmanlike manner;
- 9.20.5 the Company shall provide such access to the site of the School as may reasonably be required, at reasonable times and on reasonable notice so as to facilitate the carrying out of the Future Works.
- 9.20.6 the Council shall not instruct any variation of the s106 Funded Works without the written consent of the Company to be provided at the Company's absolute discretion

10. **CONDUCT OF CLAIMS**

10.1 In respect of the indemnities given in this Agreement:

- 10.1.1 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 or threatened against it by a third party in respect of which a claim will or may be made under the relevant indemnity;
- 10.1.2 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 by a third party to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact on the indemnified party, the indemnifying party shall consult with the indemnified party and shall at all times keep the indemnified party informed of all material matters and obtain their consent before settlement which shall not be unreasonably withheld or delayed; and
- 10.1.3 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 by a third party. The indemnifying party shall reimburse the indemnified party for all reasonable costs and expenses (including legal costs and disbursements) incurred in providing such cooperation and/or arising as a result of the indemnifying party's failure to defend, conduct and/or settle such claims and proceedings.

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 contact 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.
- 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 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) other than as expressly set out in this Agreement.

15. **GOVERNING LAW AND JURISDICTION**

- 15.1 This Agreement will be governed by and interpreted in accordance with the 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.

IN WITNESS of which the parties or their duly authorised representatives have executed this Agreement as a Deed on the date first written above.

EXECUTED (but not delivered until the date hereof) AS
A DEED by affixing the Common Seal of
LEICESTERSHIRE COUNTY COUNCIL in the presence
of:-

.....
Authorised Signatory

Signed as a DEED by _____, Head Teacher
and _____ for and on behalf of THE
GOVERNING BODY OF FERNVALE PRIMARY SCHOOL

in the presence of:

Signature of witness:

Witness' name:

Witness' address:

EXECUTED (but not delivered until the date hereof) AS
A DEED by Oadby, Wigston and Leicestershire Schools
Academy Trust acting by a Director in the presence
of:- Director

in the presence of:

Signature of witness:

Witness' name:

Witness' address:

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 pension schemes (both occupational and personal) applicable to the employees.
 - 11.2 Details of any current or pending applications for early retirement.

SCHEDULE 2

THE CONTRACTS

Document attached separately

SCHEDULE 3

THE ASSETS

1. All equipment, furniture, fixtures and fittings on the site of 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 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.
3. All rights of the Council or Governing Body (as appropriate) in respect of computer software used by the School whether granted by licence or otherwise.
4. Any balance remaining from the School's budget following completion of due accounting procedures.
5. Any grants made to the School in respect of periods before the Transfer Date.
6. School Artwork(s) (excluding any School Artworks which are loaned to the School).

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 which are dealt with by separate agreement.
2. 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) Regulations 2010 and any amounts referred to at paragraph 4 of Schedule 3).
3. The Artwork(s).
4. Any School Artworks loaned to the School.

