

DATED _____ 2013

THE COUNCIL OF THE CITY OF COVENTRY (1)

and

THE GOVERNING BODY OF ERNESFORD GRANGE COMMUNITY SCHOOL (2)

and

SIDNEY STRINGER MULTI ACADEMY TRUST (3)

TRANSFER AGREEMENT

brownejacobson

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of Council House, Earl Street, Coventry CV1 5RR (the "Council");
- (2) **THE GOVERNING BODY OF ERNESFORD GRANGE COMMUNITY SCHOOL** of Princethorpe Way, Coventry, West Midlands CV3 2QD (the "Governing Body");
- (3) **SIDNEY STRINGER MULTI ACADEMY TRUST** a company limited by guarantee registered in England and Wales (company number 06672920) whose registered office is at City College Coventry, 50 Swanswell Street, Coventry CV1 5GD (the "Company").

WHEREAS

- (A) 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 Council and on the Transfer Date the Council will grant a lease to the Company of the site currently occupied by the School

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 Ernesford Grange Community School

"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;

"Community Use Agreement"

means an agreement between the Council (1) and the Company (2) pursuant to the conditions set out and more particularly detailed in the Planning Permission and being substantially in the form annexed hereto and marked "Annex A"

"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"

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 but not limited to:

- (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 listed in Schedule 2 (true

and accurate copies of which have been disclosed to the Company prior to the Transfer Date),

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"

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

"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 by the Council;

"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 Contracts”	means the contracts described in Schedule 5 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;
“Lease”	means the lease of the Property dated on about the date hereof and made between the parties
“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 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, 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;

"Planning Permission"	means the planning permission relating to the Property under reference FUL/2013/1078
"Property"	means the land and buildings as described in the Lease
"the Pupil Records"	means the 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;
"the Regulations"	means The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time);
"the School"	means Ernesford Grange Community School (a maintained school);
"School Fund"	means the account held in at Lloyds TSB A/C no: 01777068 Sort Code: 30-93-54;
"School Employees"	means any employees of the Council 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;
"Third Party Consent"	means a consent, licence, approval, authorisation or waiver required from a third party for the conveyance, transfer, assignment or novation in favour of the Company of any of the Assets or Contracts;
"the TPS"	means the Teachers' Pension Scheme established pursuant to regulations 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 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;

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

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

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

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

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

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

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

1.5 General words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms "including", "include", "in particular" or any similar expression will be

construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms.

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

2. **CONDITION PRECEDENT**

This Agreement is conditional 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 on the day following such date.

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 at least 14 days prior to conversion date to the extent lawfully permitted provide the Company with the Employee Schedule and Staffing Information.
- 4.2 The Council shall notify the Company of any material change to the Employee Schedule and the Staffing Information prior to the Transfer Date 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 as at the date of this Agreement and again as at the Transfer Date:

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

4.3.2 that neither it (nor any other employer of a School Employee) 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 neither it (nor 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 similar checks required by law, will have been carried out in relation to all Transferring Employees

4.3.7

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 pay such liabilities in the ordinary course prior to the Transfer Date and hereby indemnifies 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 Employees 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 them 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 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 Local Government Pension Scheme (Administration) Regulations 2008 (“the LGPS Regulations” which expression shall include any

regulations amending or replacing the regulations from time to time) 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 Teachers’ Pension Scheme Regulations 1997 SI 1997/3001 (“the TPS Regulations” which expression shall include any regulations amending or replacing the regulations from time to time) 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, 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 service up to and including the Transfer Date.

8.5 The Company shall be responsible for all employer contributions payable to the LGPS and the TPS in respect of the Eligible Employees and any sum due to the LGPS and the TPS arising out of the termination of their employment.

8.6 The Company shall:-

8.6.1 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 on the expiry or termination of their employment;

8.6.2 promptly provide to the Council such documents and information which the Council may reasonably request in advance of the expiry or termination of the employment of any Eligible Employee; and

8.6.3 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 on the expiry or termination of their employment.

9. **THE ASSETS AND THE CONTRACTS**

9.1 On the Transfer Date the Council and/or the Governing Body (as applicable) will transfer such right and title as they have to the Assets (subject to any Encumbrance to which such Assets are subject and to any Third Party Consent), to the Company free of charge.

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

9.3 The Council, the Governing Body and the Company shall work together in good faith to achieve a smooth transfer which best meets the needs of students transferring from the School to the Academy.

9.4 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.

9.5 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.

9.6 The Council and/or Governing Body (as applicable) with effect from the Transfer Date assigns to the Company all the Contracts:-

9.6.1 which are capable of assignment without the consent of other parties to those contracts; or

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

9.7 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:

9.7.1 this Agreement shall not constitute an assignment or an attempted assignment of that Contract if the assignment or attempted assignment would constitute a breach of that Contract;

9.7.2 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 that Contract; and

9.7.3 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.

9.8 Pending the Transfer Date, possession of the Assets shall be retained by the Council and/or the Governing Body (as the case may be).

- 9.9 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) in the ordinary course of business and the Council undertakes to indemnify and keep the Company and the Governing Body indemnified against any Historic Liabilities for which it is responsible under this clause.
- 9.10 All receipts relating to the Assets and the Contracts and all Losses and outgoings relating to the Assets and the Contracts incurred or payable 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.
- 9.11 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).
- 9.12 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).

- 9.13 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.
- 9.14 In any case where the Contracts entered into by the Council relate to building works which 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 Contracts shall not be assigned and the Council shall hold the benefits of such 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:
- 9.14.1 the Council shall continue to perform the employer's obligations under such Contracts;
- 9.14.2 the Council shall use reasonable endeavours to 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 use reasonable endeavours to procure that the contract administrator shall take all due and proper regard of the representations made by the Company in relation to such certificate provided that such representations are provided within 5 business days of such notice;
- 9.14.3 the Council shall at the request and expense of the Company take such action under the 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
- 9.14.4 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 such Contracts to the Company and clause 9.7 shall apply.

9.15 The Company shall comply with condition 11 of the Planning Permission and within nine (9) months from the date hereof the Company shall enter into and complete the Community Use Agreement with the Council

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; 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 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.

- 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.

**THE COMMON SEAL of
THE COUNCIL OF THE CITY OF
COVENTRY**

was hereto affixed in the presence of
[]

Authorised Signatory

.....

**SIGNED as a DEED by [],
Head Teacher and []
Chair of Governors for and on behalf
of THE GOVERNING BODY OF
ERNESFORD GRANGE COMMUNITY
SCHOOL**

in the presence of:

Signature of witness:

Witness' name:

Witness' address:

**EXECUTED AS A DEED by
SIDNEY STRINGER MULTI ACADEMY
TRUST**

acting by [],
a director, in the presence of:

Director

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 Equality and Human Rights Commission, the Health and Safety Inspector and HM Revenue and Customs 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

[List of transferring contracts to be added]

SCHEDULE 3

THE ASSETS

1. All equipment, furniture, fixtures and fittings on the site of the School (“**the loose plant and equipment**”).
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. 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 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) Regulation 2010, or any amounts referred to at paragraph 4 of Schedule 3.

SCHEDULE 5

THE EXCLUDED CONTRACTS

COMMUNITY USE AGREEMENT

Sidney Stringer Multi Academy Trust (1)

Coventry City Council (2)

FORM OF

COMMUNITY USE AGREEMENT

Ernesford Grange Academy

Ashington Grove

Coventry

CV3 4DE

COMMUNITY USE AGREEMENT

TITLE OF PROJECT: Ernesford Grange Academy Sports Block and External Sports Areas.

DATE: [2013]

PARTIES

- (1) Sidney Stringer Multi Academy Trust [,]Coventry. ("the Company")
- (2) **Coventry City Council Planning Department** ("The Authority ")
The Council House, Earl Street, Coventry, CV1 5RR

1. RECITALS

- (1) Ernesford Grange Academy has the responsibility to manage and operate the Schools Sports Block and external sports facilities.
- (2) The Company and the Authority wish to enter into this Agreement in order to make the Sports Block, external areas and those areas listed of the School available (when the use is not required by the School) for use by the local community in recognition of Sport England's aim in promoting participation in sport and encouraging provision of sports facilities.

2. DEFINITIONS AND INTERPRETATION

In this Agreement the following words or phrases have the corresponding meanings ascribed to them unless the context otherwise requires:

Casual Use	Availability for any individual(s) or group to book the Facility at relatively short notice for use on a pay-as-you-play basis
Community Use Period	XXXpm – XXX pm weekdays during School term time XXXam - XXXpm Saturdays XXXam – XXXpm school holidays
Facility	Details to be completed – eg sports hall multi use games facility astro turf pitch gym
Other	Details to be added , Classrooms, Meeting Rooms
Low Income	In receipt of Unemployment Benefit or Income Support
Marginal Costs	Staff costs and administration, heating, lighting, cleaning and routine maintenance, publicity, insurance premiums, non-capital equipment
Development Programme	A programme of activities aimed at (i) attracting and retaining the interest of new participants in the following sports: cricket, football, volleyball, tennis[list any others] with the overall objective of establishing new clubs or encouraging new participants to join established clubs and (ii) maintaining the quality of provision for regular/established participants in
Peak Use Period	XXXpm - XXXpm weekdays
People with Disabilities	All Registered Disabled people

Priority Groups	Those categories of persons identified in Clauses 4.2.1 to 4.2.7
The School	Ernesford Grange Academy, Ashington Grove , Coventry
School Core Time	8.00am - 5.00pm weekdays during School term time
The Premises	The land and buildings provided for and essential to the educational purposes of the School
Sports Development Programme	A programme of activities aimed at (i) attracting and retaining the interest of new participants in sport with the overall objective of establishing new clubs or encouraging new participants to join established clubs and (ii) maintaining the quality of provision for regular/established participants in sport.

3. **AIMS**

The parties hereto agree to support the development and use of the Facility in order to pursue the following aims:

- 3.1 To increase and improve the quality of sporting and physical activity opportunities for the pupils of the School in curricular and extra-curricular sports activities
- 3.2 To provide opportunities for local people and sports organisations to participate in sport and physical activity, primarily – please detail sports are you aiming for? Football, Tennis and Cricket, to develop their skills particularly among low participant groups
- 3.3 Where appropriate to establish Ernesford Grange Academy as a community club in the Binley area to support voluntary sector groups to help raise

standards of coaching education and training administration volunteering and performance pathways in Coventry.

4. OBJECTIVES

In accordance with the above aims the parties agree that the Project will have the following objectives:

- 4.1 To maximise use of the Facility during term time and the School holidays between xxxam and xxxpm each day (Mon – Fri) xxxam – xxxpm (Sat and Sun)
- 4.2 (i) to give opportunities for beginners, for people wishing to improve their skills via programmes of coaching and competition and training for players coaches and officials
- 4.3 (ii) specific activities aimed at attracting new participants from the following priority groups:
 - 4.3.1 16 and under;
 - 4.3.2 45 and over;
 - 4.3.3 girls and women;
 - 4.3.4 Lower socio economic groups;
 - 4.3.5 Black and Ethnic Minorities;
 - 4.3.6 People with Disabilities;
 - 4.3.7 Other specified target groups agreed between the parties to this Agreement
- 4.4 and (iii) a balanced programme of use which satisfies school needs and provides for a wide range of community sports including provision for:

- 4.4.1 Development Initiatives;
- 4.4.2 Casual Use;
- 4.4.3 League and tournament competition from junior to senior levels
- 4.4.4 Organised club sessions;
- 4.4.5 Coaching and officiating courses;
- 4.4.6 Children and/or adult education courses

5. TARGETS FOR COMMUNITY USE

Ernesford Grange Stringer Academy will use its best endeavours to achieve the targets for the Project as set out in Schedule 2.

6. MANAGEMENT

The Company agrees and undertakes with Coventry City Council (in the first instance) that it shall:-

- 6.1 be responsible for the Facility and will resource manage and routinely maintain it in a manner that will allow achievement of the aims and objectives set out in clauses 3 and 4 and the targets set out in Schedule 2.
- 6.2 make available the Facility on the occasions and times herein specified for community use and use by the School
- 6.3 provide lights and such other amenities as required for the Facility and its intended use
- 6.4 insure and keep insured the Facility against all usual commercial risks including public liability in its full reinstatement value.
- 6.5 effect repairs and make good accidental damage arising out of or occasioned by the use of the Facility or in the event of damage by an

insured risk

6.6 establish a practical policy framework for managing and operating the Facility during periods allocated for community use and for use by the School. Within the financial constraints imposed by Part 2 Chapter VI of the Education Act 1996 as amended and the Governing Body's Instrument of Government this framework should seek to enable:

6.6.1 A policy of affordable pricing which clearly demonstrates the capability of achieving the targets for community use defined above;

6.6.2 The promotion and forward planning of developmental activities at times which best suit the Priority Groups;

6.6.3 Equal opportunities of access for the principal use groups;

6.6.4 Flexibility to extend access beyond the defined Community Use Period provided that this does not adversely affect the School curriculum requirements

6.6.5 Easy and accessible booking arrangements for Casual Use;

6.6.6 Regular review of the programme bookings of the Facility under this Agreement

6.7 A Sub Group Committee will agree the matters specified in 6.6 and will review and adopt new procedures and policies related to community use. The Committee shall include a representative of the stakeholders plus a representative from the facility management.

7. **FINANCE**

The Operation of the Sports Block and external areas must be self financing without impact or financial support from Academy budget.

8. **REVIEW**

The aims and objectives set out in Clauses 3 and 4 of this Agreement shall be reviewed on a regular basis by the Sub Group Committee. Prior written approval of the parties to this Agreement will be required before any revisions are made or implemented

9. **DURATION OF AGREEMENT**

This Agreement will remain in force for a period **20 years** from the date hereof

10. **AUTHORITY**

The Company warrants that it has the full right and authority to enter into this Agreement

11. **NO VARIATIONS**

This Agreement may only be varied in writing by a document executed by all the parties hereto.

12. **NO AGENCY**

Nothing in this Agreement shall be construed as creating a partnership, a joint venture, a contract of employment or a relationship of principal and agent between the parties hereto

13. **SEVERABILITY**

If any term condition or provision contained in this Agreement shall be held to be invalid unlawful or unenforceable to any extent such term condition or provision shall (save where it goes to the root of this Agreement) not affect the validity legality or enforceability of the remaining parts of this Agreement

14. **WAIVER**

No term or provision of this Agreement shall be considered as waived by any party

to this Agreement unless a waiver is given in writing by that party

15. NON-ASSIGNABILITY

This Agreement is personal to the parties and none of them shall assign sub-contract or otherwise deal with their rights or obligations

16. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales

17. A PARTY CEASING TO EXIST

17.1 In the event that the Company ceases to exist or is wound up this Agreement shall become the responsibility of the successor to the Ernesford Grange Academy.

18. CHANGE OF SCHOOL CATEGORY

Each of the Company and the Authority agree that it will not take any step to change the category of the School pursuant to the provisions of the School Standards and Framework Act 1998 as amended without securing the continued community use of the Facility pursuant to the terms of this Agreement.

IN WITNESS whereof the parties have executed this Agreement the day and year first above written

SIGNED by *(name)* on behalf of ()

The Company

in the presence of: *(signature of witness)* ()

(Address and Description)

SIGNED by *(name)* on behalf of _____)

[Coventry City Council Planning Dept] _____)

in the presence of: *(signature of witness)* _____)

(Address and Description)

SCHEDULE 1

The Facility – Proposed site indicated below

SCHEDULE 2

The Targets

1. A minimum of 15 hours * 2 pitches per week of actual community use throughout the year (with higher levels of use during School holidays) within which a minimum number of hours per week should be designated for each of the following:
 - 1.1 A minimum of **3** hours * 2 pitches per week during the Community Use Period for Football groups identified in the Development Programme
 - 1.2 A minimum of **3** hours * 2 pitches per week for sports development initiatives aimed at the Priority Groups
2. Promotion and establishment of a structured programme of sports development Initiatives aimed at and sensitive to the needs of each Priority Group.
3. Promotion and establishment of an annual Ernesford Grange Academy Sports Development Programme it is envisaged that it will include:
 - 3.1 Football, Tag Rugby & Hockey sessions;
 - 3.2 coaching and skill training of players from grass roots to club level and county level;
 - 3.3 a tournament and leagues for junior and senior players
 - 3.4 a Young Persons Officiating/Volunteering course;
 - 3.5 a level 1 and level 2 coaching course;
 - 3.6 FA Referees Course
4. Use of the Facility by the community to become self-financing in terms of recovering the Marginal Costs of operating community use.

SCHEDULE 3

Current Use and Projected Use

Current Usage

Ernesford Grange Academy utilise the sports areas for the curriculum and extra curricular activities during term time.

Projected Usage

Day	5	6	7	8
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				

	9	10	11	12 1pm
Sat				

Winter Fees Inc Lights 1st Sept – 31st March

Peak / Commercial Usage

Half Pitch £26
 £20

Full Pitch £50
 £35

Community Use

Half Pitch

Full Pitch

Summer Fees 1st April – 31st August Exc lights

Peak / Commercial Usage

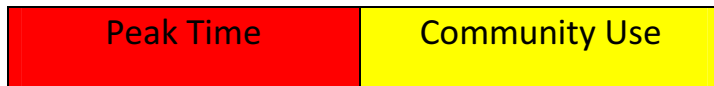
Community Use

Half Pitch £20
 £15
Full Pitch £35
 £25

Half Pitch

Full Pitch

KEY



Please note:-The school and its facilities are currently closed from 1pm on a Saturday and all day Sunday.

If bookings are made for a Saturday after 1pm and Sundays the school will operate the facility ensuring the financial viability of the request.

SCHEDULE 4

Clubs currently using Sports Hall at Ernesford Grange

please list clubs and current (or before the new build) usage.

please list any new New Clubs/Organisations coming in?