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**Cabinet**

**8<sup>th</sup> March 2016**

**Name of Cabinet Member:**

Cabinet Member for Education - Councillor Kershaw

**Director Approving Submission of the report:**

Executive Director of Place

**Ward(s) affected:** Wainbody

**Title:**

Academies Act 2010 - Grant of Long Leases to proposed academy conversion of Finham Primary School

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**Is this a key decision?**

No - this matter will largely affect the Wainbody ward, although the impact is not expected to be significant

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**Executive Summary:**

The Governing Body of Finham Primary School has agreed to convert to academy status and has made a successful application to the Secretary of State for an Academy Order under the Academies Act 2010 ("the 2010 Act"). They propose to join the Finham Park Multi Academy Trust (MAT) with effect from 1<sup>st</sup> April 2016.

In response the Council is required under Schedule 1 of the 2010 Act (as amended by Schedule 14 of the Education Act 2011 ("the 2011 Act")) to either transfer the freehold or grant a 125-year long lease at a peppercorn rental of the land and/or buildings within its ownership that has been wholly or mainly used for the purposes of the school in the period of 8 years ending on the day on which an order is made. Following DfE guidelines the Council's preferred approach is the grant of the long lease.

The Council is also required to agree an Asset Transfer Agreement which covers the transfer of furniture, equipment and other assets and also provides warranties covering transferring information and pre and post conversion issues.

At the Scrutiny Coordination Committee meeting on 27 April 2011 the Cabinet Member for Education agreed to receive formal reports for all schools seeking academy status covering the lease and other legal agreements between the Council and the proposed academy. Given that the conversion process has largely become routine with the standardisation of conversion documents. This report seeks to:

- 1.1 Report on the grant of the long lease of the land and premises at Finham Primary School to the Finham Park Multi Academy Trust (MAT) with a proposed effective date from 1st April 2016;
- 1.2 Note the consultation undertaken by the School with their local community including with ward councillors, in relation to any claims for access and/or rights of way across the land to be included within the demise under the long lease.
- 1.3 Seek approval for the recommendations set out below:

**Recommendations:**

Cabinet is requested to:

1. Approve the grant and completion of a 125-year lease of the land and premises at Finham Primary School at a peppercorn rental from the Council to the Finham Park Multi Academy Trust;
2. Approve the Council entering into the Asset Transfer Agreement for Finham Primary School with the Finham Park Multi Academy Trust;
3. Delegate authority to the Executive Director of Place and Executive Director of Resources in consultation with the Cabinet Member for Education to agree any amendments to the Lease and Asset Transfer Agreement arising from further consideration by the academy sponsor; and
4. Agree to receive future academy conversion reports on an exception basis, in cases where the Executive Director of Place and Executive Director of Resources, in consultation with the Cabinet Member for Education consider that there are significant issues that require wider consideration by Cabinet.

**List of Appendices included:**

- Appendix 1: Draft Lease Agreements  
Appendix 2: Lease Plans for school site and Site Services Officer property  
Appendix 3: Draft Asset Transfer Agreement

**Other useful background papers:**

None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No.

**Report title:** Academies Act 2010 - Grant of Long Leases to proposed academy conversion of Finham Primary School

**1. Context (or background)**

- 1.1 Following consultation, the Governing Body of Finham Primary School (“the School”) have elected to apply for academy status as permitted by the 2010 Act (as amended by the 2011 Act) and to join the Finham Park Multi Academy Trust (MAT). As a “converter” academy the school will not thereafter be maintained by the Local Authority.
- 1.2 The academy sponsor is required to liaise with the owner of the School’s land and buildings (usually the Council as local authority) to agree the terms of either the freehold transfer or the grant of a long lease for the land and buildings used and occupied by the current school. In the absence of agreement between the parties the Secretary of State can use a discretionary power under the 2010 Act to step in and make a "transfer scheme" requiring the land owner to transfer the land and buildings either by a freehold transfer or the grant of a long lease (based upon a model form approved by the Department for Education (DfE)).
- 1.3 The Council and the MAT are also required to agree a Commercial or Asset Transfer Agreement covering the transfer of assets furniture, equipment etc and also providing warranties across both parties in terms of information transfer etc. The transfer of employees and under TUPE and pension arrangements will also be covered.
- 1.4 The DfE has produced a set of standard form documents for use in these agreements and these will form the basis for agreements between the Council and the Finham Park MAT. Where there are any Council-owned assets on the site e.g. Wide Area Network (WAN) equipment, then the service manager will agree separate rental/loan terms with the School and the Council will retain ownership.
- 1.5 At its meeting on 12 February 2013, Cabinet adopted an amended policy on local authority maintained schools converting to academy status. This re-stated the Council's opposition to forced academy conversions, however agreed that where there are no other options that the DfE will approve, then the Council will work with the Governors and DfE to identify an academy sponsor that is local to the City and committed to working in strong partnership with Coventry and its schools. The proposed academy status for these schools has been approved by each of the School's Governing Bodies and is therefore not a forced conversion.
- 1.6 At the Scrutiny Coordination Committee meeting held on 27<sup>th</sup> April 2011, the Cabinet Member for Education decided that the necessary leases, loan agreements and other agreements for each academy application should be the subject of formal consideration by the relevant Cabinet Member or Cabinet.
- 1.7 Following the above meeting, the Cabinet Member for Education also decided to require schools seeking conversion to undertake specific consultation with their local communities in relation to the grant of the lease. In particular, the Cabinet Member for Education was interested to hear of any claims in relation to access or rights of way from the general public. Officers were asked to liaise with ward councillors on the same matter.
- 1.8 The Council is required to cooperate with the sponsor and schools proposing to convert. In addition to the formal lease and asset transfer agreements, the Council is also required at its own expense to agree closure of accounts and financial transfers, and provision of HR support and information (including staff transfer, TUPE and pension data).

- 1.9 On 20<sup>th</sup> January 2016 the Cabinet Member for Education approved the recoupment of costs incurred by the Council in respect of future academy conversions. The conversion of Finham Primary School will be the first school to which recoupment of costs will apply.

## **2. Options considered and recommended proposal**

- 2.1 Under Schedule 1 of 2010 Act (as amended by Schedule 14 of the 2011 Act), the Council is required to either transfer the freehold or grant to the academy a 125 year lease at a peppercorn rental for land and premises wholly or mainly used by the school in the preceding 8 years. The Council's preferred option is the grant of the 125 year lease. A draft lease for the MAT academy converter school is shown at Appendix 1 and site plan showing the demise of the site proposed for transfer is shown at Appendix 2.
- 2.2 The Council is required by DfE to agree an Asset Transfer Agreement with the MAT. Failure to do so may delay the conversion of the school. In the event that the conversion proceeds without the agreement being in place the Council may be exposed to potential liabilities in respect of assets and contracts post-conversion which would have been assumed by the academy under the model agreement prepared by the DfE. The draft asset transfer agreement is shown at Appendix 3.
- 2.3 Failure to agree a lease for the school buildings and playing fields may result in the Secretary of State using her discretionary power under Schedule 1 of the 2010 Act to step in and make a transfer scheme.
- 2.4 Since 2008 you have received reports covering the conversion of 32 schools to academies. The academy conversion process has now largely become standardised with the development of template conversion documents including model leases and commercial transfer agreements. It is therefore proposed that for future conversions, reports are brought to Cabinet on an exception basis only i.e. where after consultation with the Executive Director of Place and Executive Director of Resources, in consultation with the Cabinet Member for Education it is considered that there are significant issues that require wider consideration by Cabinet. For example this could be in the event that issues are raised as part of the local consultation over the lease or that there are significant financial risks to the proposed conversion.

## **3. Results of consultation undertaken**

- 3.1 There is no requirement by DfE on local authorities or converting schools to consult specifically on the proposed lease of land/buildings. However, as stated in paragraph 1.7, schools seeking academy status are advised to undertake a formal consultation exercise with their local community to ascertain if any rights of way or access claims exist for the land to be contained within the lease. The proposed lease will include a clause seeking to protect such rights (if any) affecting the land which are still subsisting and capable of taking effect.
- 3.2 The school has led a public consultation exercise regarding the proposals to be included within the lease and associated land. A public notice was published in the Coventry Telegraph in January 2016 inviting comments and also posted at the entrance to the school. Comments were invited by 31<sup>st</sup> January 2016. The appropriate local Ward Councillors were also advised of the consultation exercise.
- 3.3 The public consultation on the proposed leases has produced no responses from the local community and ward councillors.

- 3.4 Headteacher groups, service providers and other stakeholders have been kept informed regarding proposals for academy conversion of all converting schools. This practice would continue as necessary in the future.

#### **4. Timetable for implementing this decision**

- 4.1 Following the agreement of this report, officers will immediately seek to finalise and complete the required long lease in liaison with the sponsor's solicitors to enable the school to convert. The proposed target conversion date is 1st April 2016.

#### **5. Comments from Executive Director of Resources**

##### **5.1 Financial implications**

- 5.1.1 Academies receive their funding directly from the Education Funding Agency which includes a share of the central funding currently received by Local Authorities for maintained schools. Before conversion a commercial transfer agreement should be in place, which is designed to ensure that a number of agreements are in place including details of any assets or contracts that will transfer to the academy trust and of those that will not.

- 5.1.2 Since April 2013 the Local Authority is funded differently for central education functions (e.g. school improvement, asset management, education welfare). This funding is now via an unringfenced grant – Education Services Grant, rather than core funding. When an academy transfers this grant is reduced on a per pupil basis both in-year and ongoing. The impact of the transfer of the School from the 1 April 2016 is £35K; this is the full year impact.

The School as a “converter” school takes any surplus or deficit balance with them at the date of conversion. This will transfer to the Finham Park MAT.

- 5.1.3 The Local Authority will need to be involved in calculating the financial balance, and paying to the academy any surplus or recouping a deficit within 4 months. In the event that the Local Authority makes an underpayment or overpayment in relation to any historic liabilities (including, without limitation, any payments relating to the School's accounts), the commercial transfer agreement states that the Local Authority and the sponsor agree to repay any such sums to the other (as appropriate).
- 5.1.4 In regard to specific financial implications on the land/buildings lease the Authority will only retain reversionary freehold risk. The Academy will acquire leaseholder and occupier risk. The Council have received clarification from the DfE Capital Review team that there will be no priority for capital given to schools that become Academies under the new system.
- 5.1.5 The School currently includes accommodation which originally formed the Finham Children's Centre. The Centre closed with effect from September 2013. DfE provided a capital grant of £187,124 to establish the Centre of which £165,124 was for 'adaptation of an existing building and £22,000 was for furniture and equipment and ICT/telephone infrastructure. The terms of the grant meant that the change had to be notified to the DfE and a case was successfully made to avoid the 'clawback' of grant. The case was based on the fact that services consistent with the terms of the grant continued to be delivered from the School which included the provision of a community information service and a full time Learning Mentor who delivers the Triple P Programme, CAF's and parent support.

5.1.6 The DfE have confirmed that any asset funded wholly or partly by our sure start capital grant remains the responsibility of the local authority (for the life of the asset) and therefore cannot transfer that asset to another party. The local authority can however transfer the running of an asset to a third party (such as an Academy). The Authority has therefore included in the lease a clause that protects the use of the asset for purposes consistent with the grant, as the DfE will always 'clawback' from the authority if the asset no longer meets the conditions of the grant.

5.1.7 Under the new recoupmnt of costs guidelines the School will be charged £6,750 to meet the costs incurred by the Council in the conversion process.

## 5.2 Legal implications

5.2.1 The 2010 Act (and amended by the 2011 Act) provides for conversion of a mainstream school into an academy in two circumstances, firstly on application of the school's governing body under clause 3, or secondly, if the school is eligible for intervention.

5.2.2 The MAT is required to liaise with the land owner (in this case the Council as Local Authority) to agree the terms of a land transfer for land and premises the School has wholly or mainly occupied as a maintained school at any time in the previous 8 years. In the event of agreement not being reached the Secretary of State has a discretionary power under Schedule 1 of the 2010 Act (as amended by Schedule 14 of the 2011 Act) to step in and make a "transfer scheme".

5.2.3 Schedule 1 of the 2010 Act requires the academy and the Council execute legal documentation transferring the land and premises by way of the transfer of the freehold or the grant of a long lease for a term of 125 years. In accordance with Schedule 1 of the 2010 Act the Council is obliged to grant to the academy a 125 year lease at a peppercorn rental of the land shown edged red on the plan attached at Appendix 2 hereto currently forming the site of the school's existing land. Guidance on land transfer from the DfE suggests that if land is held by a local authority then a long leasehold interest should be granted rather than a transfer of the freehold.

5.2.4 There is also an off-site Site Services Officer (SSO) property which is under the ownership of the Council at 411 Green Lane. In order to protect the Council's asset, the Council will demise to the MAT the site service accommodation under a separate lease agreement. In the event that the MAT ceases to use 411 Green Lane as a site services officer accommodation the Council will have the right to terminate the lease and take possession of the same. This approach has been adopted on other academy conversions. This will protect the Council's property asset and any future capital receipt.

5.2.5 Officers within the Resources Directorate (Legal Services) will prepare and complete the long leases to the Finham Park MAT. The form of lease will be based upon the "model long term lease" produced by the DfE.

5.2.6 Officers within Resources Directorate (Legal Services) will also prepare and complete an Asset Transfer Agreement in respect of the school with the Finham Park MAT. The form of agreement will be based upon the model form document produced by the DfE. In the Transfer Agreement the Council will indemnify the academy company in respect of employee claims prior to the Transfer Date. Such claims would typically include claims for unfair dismissal, redundancy discrimination claims and equal pay claims. There are no such claims outstanding in respect of this school. Various contracts will also be transferred and cross indemnities given in respect of the obligations assumed under such will be given by the Council and the Academy company to each other.

## **6. Other implications**

### **6.1 How will this contribute to achievement of the Council's Plan?**

The creation of Academies, if they are not part of a positive partnership of schools, has the potential to significantly reduce the Council's ability to pursue its corporate objectives that all children and young people are safe, achieve and make a positive contribution to the City. To date, good working relationships have been maintained with Finham Park MAT and the sponsors have expressed a commitment to continue to work with the Council. This will require the sponsor and any future academies to use some of their funding to support partnership working.

Academies will have the ability to change the length of the school day and also set their own Term and holiday dates. Should academies set different dates from those agreed by other schools in the city then this will impact on parents particularly those with children at other schools.

### **6.2 How is risk being managed?**

An academy is no longer maintained by the Local Authority and the land and buildings transfer to the academy trust, so health and safety will no longer be the Local Authority's responsibility. It will be the same for business continuity. If there were significant Health and Safety or Business Continuity issues in an academy school this could result in numbers of children and young people not being in school. This is likely to have an impact on the Local Authority. This needs to be discussed and agreed with sponsors and headteachers as we consider with them the protocols for working with academies.

### **6.3 What is the impact on the organisation?**

Academies are independent bodies from the Council. As such they will have freedom to decide where they obtain services and support from. Where academies decide to procure services elsewhere than the Council then this may impact on the services involved. For many Council services this means no change as under Fair Funding legislation and Budget Delegation requirements, schools have held such budgets and service delivery decision-making powers for several years. However, where services have been provided as part of a corporate statutory service then academies will need to purchase such services from the Council or seek an alternative provider. When bidding for academy business, all Local Authority services will have to base bids on commercial rates that achieve full recovery of Authority costs. Revised formal arrangements in respect of service charging for community and academies were introduced from April 2013.

As academies will become the employers of the school's staff, the converting schools will be required to follow TUPE legislation and also agree appropriate admission arrangements to teacher and support staff pension bodies prior to conversion. In the case of these schools the current school Governing Body are the employer and therefore will need to enter a TUPE arrangement for the transfer of staff with the Finham Park MAT. Trade unions have been and will continue to be consulted on the transfer.

The 125 year lease of land and buildings will make the academy wholly responsible for repair, maintenance and upkeep of the school's land and buildings (including 411 Green Lane).

#### **6.4 Equalities / EIA**

There are no specific EIA issues directly related to the land transfer. The agreement of a lease for the land and buildings to each academy will in itself not have any adverse affect on the community access or enjoyment of each of the sites compared to that currently available from the school. Parts of the current school buildings and certain site locations may have access restrictions or limits for those with a disability (eg wheelchair users, blind/partially sighted) or movement restriction (eg elderly) due to the age and design of the site, however, these issues will not worsen with the agreement of the lease. Responsibility for monitoring and addressing access issues on the site will transfer from the Council to the academy with the school's conversion to academy status and it will be for each academy to prioritise improvement works in the usual way.

#### **6.5 Implications for (or impact on) the environment**

Academies, as an independent organisation from the Council, will be responsible for working towards its own agenda for environmental improvements. The Carbon Reduction Commitment (CRC) Energy Efficiency Scheme as amended is a mandatory carbon emissions tax covering non-energy intensive users in both public and private sectors, and is a central part of the UK's strategy to deliver the emission reduction targets set in the Climate Change Act 2008. Emissions from academies are to be included in the total reported carbon emissions for their participating local authority. As such Academies will be responsible for providing appropriate information to the Council to enable us to procure Carbon Credits on their behalf.

#### **6.6 Implications for partner organisations?**

None that have not already been addressed



**Report author(s):**

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**Directorate:** Place

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**Appendix 1A**

**Draft Lease for Land and Buildings at Finham Primary School**

**Dated**

**2016**

**(1) The Council of the  
City of Coventry  
(Landlord)**

**(2) Finham Park Multi Academy Trust  
(Tenant)**

Draft Lease/Feb '16

**Lease**

Land and buildings at  
Finham Primary School  
Green Lane  
In the City of Coventry

**Term:** 125 years

Excluded from Landlord and Tenant Act 1954 Part II

**Rent:** Peppercorn (if demanded)

**Ref:** L/JS/7002-17141

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**CLAUSE**

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**LAND REGISTRY REQUIRED WORDING FOR PRESCRIBED CLAUSES LEASE**

<b>LR1.</b>	<b>Date of lease:</b>	2016									
<b>LR2.</b>	<b>Title number(s):</b>	<table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;"><b>LR2.1</b></td> <td style="vertical-align: top;"><b>Landlord's title number(s):</b></td> <td style="vertical-align: top;">WK301216</td> </tr> <tr> <td style="vertical-align: top;"><b>LR2.2</b></td> <td style="vertical-align: top;"><b>Other title number(s):</b></td> <td style="vertical-align: top;">None</td> </tr> </table>	<b>LR2.1</b>	<b>Landlord's title number(s):</b>	WK301216	<b>LR2.2</b>	<b>Other title number(s):</b>	None			
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<b>LR2.2</b>	<b>Other title number(s):</b>	None									
<b>LR3.</b>	<b>Parties to this lease:</b>	<table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;"><b>Landlord:</b></td> <td colspan="2" style="vertical-align: top;">The Council of the City of Coventry Council House Earl Street Coventry CV1 5RR</td> </tr> <tr> <td style="vertical-align: top;"><b>Tenant:</b></td> <td style="vertical-align: top;">Finham Park Multi Academy Trust</td> <td style="vertical-align: top;">of</td> </tr> <tr> <td></td> <td colspan="2" style="vertical-align: top;">(Company Registered Number [                    ])</td> </tr> </table>	<b>Landlord:</b>	The Council of the City of Coventry Council House Earl Street Coventry CV1 5RR		<b>Tenant:</b>	Finham Park Multi Academy Trust	of		(Company Registered Number [                    ])	
<b>Landlord:</b>	The Council of the City of Coventry Council House Earl Street Coventry CV1 5RR										
<b>Tenant:</b>	Finham Park Multi Academy Trust	of									
	(Company Registered Number [                    ])										
<b>LR4.</b>	<b>Property:</b>  (referred to in the remainder of this lease as the "Property")	Please see the definition of "Property" in clause 1.1 and Schedule 1									
<b>LR5.</b>	<b>Prescribed statements etc:</b>	None									
<b>LR6.</b>	<b>Term for which the Property is leased:</b>  (referred to in the remainder of this lease as the "Term")	The term is as follows: 125 years from and including the                    day of                    2016									
<b>LR7.</b>	<b>Premium:</b>	None									
<b>LR8.</b>	<b>Prohibitions or restrictions on disposing of this lease:</b>	This lease contains a provision that prohibits or restricts dispositions									
<b>LR9.</b>	<b>Rights of acquisition etc:</b>	<table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;"><b>LR9.1</b></td> <td style="vertical-align: top;">Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land:</td> </tr> <tr> <td></td> <td style="vertical-align: top;">None</td> </tr> <tr> <td style="vertical-align: top;"><b>LR9.2</b></td> <td style="vertical-align: top;">Tenant's covenant to (or offer to) surrender this lease:</td> </tr> </table>	<b>LR9.1</b>	Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land:		None	<b>LR9.2</b>	Tenant's covenant to (or offer to) surrender this lease:			
<b>LR9.1</b>	Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land:										
	None										
<b>LR9.2</b>	Tenant's covenant to (or offer to) surrender this lease:										

		None
	<b>LR9.3</b>	Landlord's contractual rights to acquire this lease:  None
<b>LR10.</b>	<b>Restrictive covenants given in this lease by the Landlord in respect of land other than the Property:</b>	None
<b>LR11.</b>	<b>Easements:</b>	
	<b>LR11.1</b>	Easements granted by this lease for the benefit of the Property:  The easement(s) set out in the Second Schedule to this lease
	<b>LR11.2</b>	Easements granted or reserved by this lease over the Property for the benefit of other property  The easement(s) set out in the Third Schedule to this lease
<b>LR12.</b>	<b>Estate rentcharge burdening the Property:</b>	None
<b>LR13.</b>	<b>Application for standard form of restriction:</b>	None
<b>LR14.</b>	<b>Declaration of trust where there is more than one person comprising the Tenant:</b>	The Tenant is more than one person. They are to hold the Property on trust.



- (c) any replacement agreement made between the Tenant and the Secretary of State for Education (or the successor government body which assumes his functions for funding educational organisations of the Tenant's kind) and which provides funding for the Tenant in relation to the operation of educational services at the Property

**"Insured Risks"**

fire lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of water tanks and pipes damage by aircraft and other aerial devices or articles dropped therefrom riot and civil commotion labour disturbance and malicious damage and such other risks as the Tenant insures against from time to time Subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters Provided that if in respect of any period of time the Tenant is unable to effect insurance against any one or more of such risks or upon terms or at a premium which the Tenant considers reasonable then during such period such risk or risks are deemed to be excluded from the definition of "Insured Risks"

**"Interest"**

interest at the rate of four per cent (4%) per annum above HSBC Bank plc Base Rate for the time being in force (both before and after any judgment) such interest to be compounded with rests on the usual quarter days or if such Base Rate ceases to be published then at the rate of 1 per cent per annum above the rate at which the Landlord could reasonably borrow from time to time

**"Law"**

any statute or any order instrument or regulation made under it or any notice or order issued by a government department the legislative making institutions of the European Union minister or local public regulatory or other authority

**"Lease"**

this Lease as varied from time to time together with any other deed document or agreement at any time during the Term amending supplemental or collateral to it

**"Outgoings"**

all present and future rates taxes duties charges assessments impositions and outgoing whatsoever (whether parliamentary local or of any other description including capital or non-recurring and including any novel expenses)

**"Plan"**

the plan annexed to this Lease

**"Planning Acts"**

the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Hazardous Substances) Act 1990 the Planning (Consequential Provisions) Act 1990 the Planning and Compensation Act 1991 the Planning and Compulsory Purchase Act 2004 and any other Law or Laws of a similar nature in force at any time during the Term

**"Premises Acts"**

the Occupiers' Liability Act 1957 the Factories Act 1961 the Offices Shops and Railway Premises Act 1963 the

	Fire Precautions Act 1971 the Defective Premises Act 1972 the Health and Safety at Work etc. Act 1974 the Occupiers' Liability Act 1984 and any other Law or Laws regulating the safety of premises and those occupying or visiting the same in force at any time during the Term
<b>"President"</b>	the President of the Institution of Chartered Surveyors
<b>"Property"</b>	the property described in Schedule 1
<b>"Reinstatement Value"</b>	the full cost of reinstating the Property including:- <ul style="list-style-type: none"><li>(a) temporarily making the Property safe and protecting any adjoining structures</li><li>(b) debris removal demolition and site clearance</li><li>(c) obtaining planning and any other requisite consents or approvals</li><li>(d) complying with the requirements of any Law</li><li>(e) architects' surveyors' and other fees incurred by the Tenant in relation to the reinstatement</li><li>(f) all construction costs</li><li>(g) any VAT chargeable on any of the reinstatement costs (save where the Tenant is able to recover such VAT as an input in relation to supplies made by the Tenant)</li></ul>
<b>"Rent"</b>	a peppercorn (if demanded)
<b>"Secretary of State"</b>	the Secretary of State for Education or such other Minister of the Crown who is a successor to such person and who is party to the Funding Agreement with the Tenant at the relevant time
<b>"School"</b>	Finham Primary School Green Lane in the City of Coventry
<b>"Term"</b>	125 years from and including the Term Commencement Date
<b>"Term Commencement Date"</b>	day of 2016
<b>"Termination Date"</b>	the date of expiration or sooner determination of the Term
<b>"the 1954 Act"</b>	the Landlord and Tenant Act 1954
<b>"the 1995 Act"</b>	the Landlord and Tenant (Covenants) Act 1995
<b>"VAT"</b>	Value Added Tax or any equivalent tax which may at any time during the Term be imposed in substitution for it or in addition to it and all references to rents or other sums payable by the Tenant are exclusive of VAT



- 1.2 In interpreting this Lease:-
- 1.2.1 references to Clauses pages and Schedules are to Clauses and pages of and Schedules to this Lease unless stated otherwise
- 1.2.2 the expression "Landlord" includes the person for the time being entitled to the immediate possession of the Property on the expiry of the Term
- 1.2.3 the expression "Tenant" includes the person in whom for the time being the Tenant's interest under this Lease is vested and its successors in title
- 1.2.4 where reference is made to a statute this includes all prior and subsequent enactments amendments and modifications relating to that statute and any subordinate legislation made under such statute
- 1.2.5 references to a "person" include any individual firm unincorporated association or body corporate and words importing the singular number include the plural number and vice versa and words importing one gender include all genders
- 1.2.6 if the Tenant is or are at any time more than one person any reference to the Tenant is deemed to refer to each such person and any obligation on the part of the Tenant takes effect as a joint and several obligation
- 1.2.7 any covenant by the Tenant not to carry out any action is to be construed as if it is (where appropriate) additionally a covenant by the Tenant not to permit or suffer such action to be done
- 1.2.8 the words "include" and "including" are to be construed without limitation and in construing this Lease the ejusdem generis principle does not apply and general words are not to be given a restrictive meaning because they are followed by particular examples intended to be embraced by the general words
- 1.2.9 a reference to an act or omission of the Tenant includes an act or omission of any undertenant and any other person deriving title under the Tenant and includes an act or omission of their respective employees and visitors
- 1.2.10 a reference to the Property includes any part of it except where the word is used in Clause 3.12
- 1.2.11 a reference to the end of the Term or to the Termination Date is to the end of the Term however it terminates
- 1.2.12 a consent of the Landlord shall be valid if it is either:-
- (a) given in writing and signed by a person duly authorised on behalf of the Landlord; or
  - (b) (if required by the Landlord after any request for consent from the Tenant but prior to consent being given) it is by deed and
- if a consent is not by deed it will not affect the Landlord's ability to require that any other consent should be by deed
- 1.2.13 any notice given to the Landlord shall not be valid unless it is in writing
- 1.2.14 the Landlord is entitled to withhold its consent where it requires the corresponding consent of any mortgagee or superior landlord of the Property until it obtains that consent (and the Landlord shall use all reasonable endeavours to obtain such consent and shall ensure that any charges or superior leases created after the date of this Lease shall contain obligations on the mortgagee or superior landlord not unreasonably to withhold or

delay consent in circumstances where the Landlord's consent cannot be unreasonably withheld or delayed under this Lease)

- 1.2.15 a right of the Landlord or anyone else to have access to or entry upon the Property extends to any superior landlord and any mortgagee of the Landlord's Property and to anyone authorised by the Landlord or any superior landlord or mortgagee and includes a right of entry with workmen equipment and materials
- 1.2.16 the table of contents and headings to Clauses paragraphs and Schedules do not affect the construction of this Lease
- 1.2.17 a right granted by the Landlord is granted in common with all other persons entitled to it and/or authorised by the Landlord to exercise it
- 1.2.18 a right excepted or reserved to the Landlord is also reserved to any other person entitled to it and/or authorised by the Landlord
- 1.2.19 where the Landlord is entitled to enter the Property on giving notice it is also entitled to enter without notice in emergency and may break and enter if it considers it necessary
- 1.2.20 nothing entitles the Tenant to enforce any obligation given by anyone to the Landlord
- 1.2.21 any person undertaking any obligation under or by virtue of this Lease which is a 'landlord covenant' for the purposes of the 1995 Act does so only in respect of the period of time during which the immediate reversion to this Lease is vested in such person and not further or otherwise
- 1.2.22 any works (whether of repair decoration alteration or otherwise) that the Tenant is permitted or obliged to carry out in accordance with this Lease shall be carried out in accordance with good modern practice
- 1.2.23 a provision of this Lease which is void or unenforceable shall be severed from all other provisions of this Lease and the remaining provisions shall continue to have effect
- 1.2.24 if a provision of this Lease extends beyond the limitations set by any Law or rule of law but if it were not so extended would remain unaffected by the Law or rule of law the provision is deemed to be varied so as not to extend beyond the limitations
- 1.2.25 if any matter is referred to arbitration pursuant to this Lease:-
  - (a) it is to be conducted in accordance with the Arbitration Act 1996 and
  - (b) the arbitrator has no power:-
    - (i) to order rectification setting aside or cancellation of this Lease
    - (ii) to direct that the recoverable costs of the arbitration or any parts of the arbitral proceedings will be limited to a specific amount
    - (iii) where there are provisions in this Lease for the payment of interest at a specified rate to award interest whether in addition to or in substitution for such interest provisions
- 1.2.26 if any matter in this Lease is to be determined by an arbitrator:-
  - (a) he is to be appointed by agreement between the Landlord and the Tenant or at the request and option of either of them is to be nominated by the President

- (b) if he dies delays or declines to act the President may on the application of either the Landlord or the Tenant discharge him and appoint another to act in his place in the same capacity and
- (c) if either the Landlord or the Tenant pays his fees and expenses it may recover the proportion (if any) the other party was obliged to pay from that other party as a debt recoverable on demand

1.2.27 wherever and to the extent that any provision of this Lease would or might contravene the provisions of section 25 of the 1995 Act then:-

- (a) such provision is to take effect only in so far as it may do so without contravening section 25 of the 1995 Act (and where such provision extends beyond the limits permitted by section 25 of the 1995 Act that provision is to be varied so as not to extend beyond those limits) and
- (b) where such provision is incapable of having any effect without contravening section 25 of the 1995 Act this Lease is to be construed and interpreted as if such provision were deleted and
- (c) the legality validity and enforceability of any of the remaining provisions of this Lease is not in any way to be affected or impaired as a result

## **BACKGROUND INFORMATION**

The construction of part of the Property known as the “Former Children’s Centre Accommodation” that was a capital funded project from monies secured under the Funding

A requirement of the Funding is that part of the Property must be used for the provision of family and childcare service as being more particularly detailed in clause 3.9.4 of this Lease

The “Finham Children’s Centre” officially closed on 31<sup>st</sup> August 2012 and in March 2013 an application was made to the DfE for deferral of capital clawback totalling £187,124.12. In July 2013

DfE agreed with the Landlord to defer (but not waiver) the clawback provisions under the Funding provided that part of the Property forming the former children’s centre continued to be used for the provision of childcare and associated young family support services broadly consistent with the terms of Funding

The Landlord and the Tenant have agreed to grant this Lease to the Tenant and the Tenant will “step into the shoes” of the Landlord and shall provide the childcare services from the former children’s centre forming part of the Property in accordance with clause 3.9.4 of this Lease The Tenant to ensure that the availability of the childcare and family support services meets the needs of families within the area

It is acknowledged that the DfE shall retain an interest in the Property under the terms of the Funding and in the event the use of the former children’s centre within the Property changes at any time during the Term and does not continue to satisfy the uses set out in clause 3.9.4 hereof then the Council is required to notify the DfE and in turn the DfE is entitled to seek to clawback the Funding

## 2. **DEMISE RENTS AND OTHER PAYMENTS**

2.1 The Landlord demises the Property to the Tenant for the Term (subject to the provisions for earlier termination contained in this Lease) the Tenant paying therefor by way of rent throughout the Term without any deduction counterclaim or set off (whether legal or equitable) of any nature whatsoever:-

2.1.1 the Rent (if demanded)

2.1.2 all other sums (including VAT) due under this Lease from the Tenant to the Landlord

2.2 The Property is demised:-

2.2.1 together with the rights specified in Schedule 2

2.2.2 excepting and reserving to the Landlord and all others now entitled (or who may become entitled) and all others authorised by them (to include any adjoining or neighbouring owners or occupiers) as specified in Schedule 3

2.2.3 subject to any rights (if any) affecting the Property which are still subsisting and capable of taking effect

## 3. **TENANT'S COVENANT**

The Tenant covenants with the Landlord as follows:-

### 3.1 **RENT AND PAYMENTS**

To pay the Rent and all other sums reserved as rent by this Lease at the times and in the manner at and in which they are reserved in this Lease

### 3.2 **OUTGOINGS**

3.2.1 Promptly to pay the Outgoings which are now or may during the Term be payable in respect of the Property or its owner or occupier except any payment occasioned by any disposition of or dealing with the ownership of any estate or interest expectant in reversion on the Term

3.2.2 To pay for all Amenities exclusively used by or available to the Property (including all standing charges)

3.2.3 To observe and perform all present and future regulations and requirements of the authorities or companies supplying or providing the Amenities

### 3.3 **REPAIR AND UPKEEP**

At all times during the Term to:

3.3.1 keep the Property (including for the avoidance of doubt all buildings structures landscaping and other erections and boundary walls, fences and hedges marked with an inward "T" on the Plan) clean and tidy and make good:

3.3.2 any damage it causes to the Property and/or

3.3.3 any deterioration to the condition of the Property that may arise from the Term Commencement Date

3.3.4 to notify the Landlord in writing immediately if any structural damage occurs to the Property

### 3.4 ACCESS OF LANDLORD AND NOTICE TO REPAIR

To permit the Landlord and all persons authorised by the Landlord (with or without equipment) upon reasonable prior notice to the Tenant (but at any time without notice in case of emergency) to enter the Property as follows:-

3.4.1 in the final 3 years of the Term in order to take inventories of any Fixtures and Fittings to be yielded up at the end of the Term

3.4.2 at reasonable intervals during the Term in order to view and examine the state of repair and condition of the Property and to give to the Tenant or the Tenant's agent or leave on the Property notice in writing to the Tenant of all breaches of any of the tenant covenants in this Lease relating to the condition or repair of the Property ("Repair Notice") and the Tenant covenants (subject to having obtained any necessary consents to any required works, which the Tenant shall use all reasonable endeavours to obtain as soon as possible) to repair and make good the Property according to such notice and the covenants in that behalf contained in this Lease within the following time periods:-

(a) where (b) and (c) below do not apply or where the state of repair is causing a breach of health and safety or other legislation or is causing structural damage ("Safety Breach"), the works shall be commenced within the period of 56 days after the service of the Repair Notice and shall be completed diligently thereafter

(b) where there is no Safety Breach, if the Tenant does not immediately have the funds to carry out such works but could complete the works within a reasonable period without requiring further funding under the Funding Agreement it shall demonstrate this to the Landlord by providing to the Landlord within 56 days of the service of the Repair Notice:-

(i) a statement of the maintenance budget for the Property (included within the funding already received under the Funding Agreement) and the sums expended that financial year to date on the repair and maintenance of the Property ("Funding Statement") and

(ii) a programme of works setting out a reasonable time period for the works to be carried out taking into account the nature of the disrepair and the funds available

and the works shall be commenced and carried out within the periods set out in the programme of works referred to at (ii) above

(c) where there is no Safety Breach and where the Tenant cannot demonstrate that it can carry out the works within a reasonable time under (b) above but requires to make an application ("Funding Application") to the Secretary of State for funding under the Funding Agreement in order to carry out such works, the relevant section of works shall be commenced as soon as reasonably practicable after the Secretary of State grants permission under the programme of works agreed pursuant to the Funding Application ("Works Programme")

and if the Tenant fails satisfactorily to comply with such notice in accordance with (a) (b) or (c) above the Landlord and all persons authorised by the Landlord are entitled at any time without notice (but without prejudice to the right of re-entry contained in this Lease) to enter the Property with all necessary equipment to repair and make good the Property in accordance with the covenants and provisions contained in this Lease and the expense of such repairs together with all reasonable legal and surveyors' fees properly incurred in connection with this sub-clause must be repaid by the Tenant to the Landlord upon demand and on a full indemnity basis as a contractual debt

- 3.4.3 where the Tenant has served notice on the Landlord pursuant to Clause 3.3.2 of the occurrence of structural damage to the Property then to permit the Landlord to enter onto the Property to view and examine the state of repair and condition of the Property
- 3.4.4 at any time during the Term to view the Property in connection with any dealing or proposed dealing (by way of sale mortgage or otherwise) with the Landlord's reversionary interest in the Property
- 3.4.5 (in circumstances only where the Landlord may have a liability under Law or under this Lease) to carry out such tests inspections and surveys as the Landlord reasonably requires
- 3.4.6 at any time during the Term to fix and retain without interference upon any suitable part or parts of the Property one or more notice boards for reletting (but in the case of reletting only within six months before the Termination Date) or selling at any time the Landlord's reversionary interest in the Property
- 3.4.7 at any time during the Term to exercise any rights reserved by this Lease and to comply with any obligations of the Landlord (whether arising under this Lease or otherwise)
- 3.4.8 at reasonable intervals during the Term in order to determine whether the Tenant has complied with all its obligations in this Lease (save that, for the avoidance of doubt, the Landlord shall not be entitled to inspect the financial records of the Tenant)

Provided that any exercise of the above rights by the Landlord does not constitute an action for forfeiture by the Landlord or evidence an intention to accept or effect the surrender of the Term and provided further that the exercise of the above rights by the Landlord shall not be in such a manner as materially to restrict or interrupt the operation of the school on the Property by the Tenant, shall cause as little damage as reasonably practicable and shall (save in relation to emergency access) be in accordance with the reasonable requirements of the Tenant in relation to the security of the Property and the health and safety of the students and others at the Property or School, and the Landlord shall make good any damage caused to the Property as soon as reasonably practicable

### 3.5 **ALTERATIONS AND ADDITIONS**

- 3.5.1 Not to commit any act of waste
- 3.5.2 Not to erect any buildings or other structures on the Property nor make any structural or external alterations additions or variations to any structures for the time being on the Property without the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed) save that the Landlord can only refuse such consent if:-
  - (a) such erection alteration addition or variation will adversely affect the Landlord's statutory obligations as a landlord or as a local authority and/or
  - (b) such erection alteration addition or variation will have an adverse effect on the structural integrity of any structures on the Property or any part or parts of any structures on the Property and/or
  - (c) such erection alteration addition or variation will adversely affect the value of the Landlord's reversionary interest in the Property

- 3.5.3 As part of the application to the Landlord for its consent pursuant to Clause 3.5.2 the Tenant shall:-
- (a) submit to the Landlord adequate plans and specifications describing the proposed erection alteration addition or variation and shall consult with the Landlord on the proposed erection alteration addition or variation and shall take into account any representations that the Landlord may reasonably make in relation to the matters referred to at Clause 3.5.2 (a) (b) and (c)
  - (b) make any necessary variations or alterations to the plans and specifications in accordance with the reasonable representations of the Landlord pursuant to sub-clause (a) above
  - (c) covenant with the Landlord as to the execution and (if it is agreed between the parties before the works are carried out that they will be reinstated at the determination of the Term) the reinstatement of any of the works as the Landlord may reasonably require
- 3.5.4 In relation to any works permitted pursuant to Clauses 3.5.2 and 3.5.3 above to carry out all such works only in accordance with such plans and specifications as have been provided to and approved by the Landlord in writing or as have been subsequently varied in accordance with any representations of the Landlord
- 3.5.5 After commencing any works of erection alteration addition or variation as permitted pursuant to Clauses 3.5.2 and 3.5.3 above to complete such works as soon as reasonably practicable and in any event no later than by the end of the Term
- 3.5.6 To carry out any works permitted by this Lease in a good and workmanlike manner as soon as reasonably practicable with good quality materials strictly in accordance with all relevant British Standards including codes of practice and the requirements and regulations of all utility companies affected by such works and so that any easements rights privileges or liberties which third parties enjoy in over or under the Property are not interfered with and that no nuisance is caused to the Landlord
- 3.5.7 Not to carry out any erection alteration addition or variation which hinders access to a Conduit

### 3.6 **SIGNS AND ADVERTISEMENTS**

- 3.6.1 To notify the Landlord of the affixing or display on the boundaries of the Property or on the outside of the buildings on the Property of any sign (which expression includes any signboard advertisement hoarding fascia poster placard bill notice or other notification) other than signs which:-
- (a) are required by law to be affixed or displayed or
  - (b) do not require planning permission or
  - (c) are necessary or usual for the authorised use of the Property
- 3.6.2 To display and maintain upon the Property notices required in relation to the Premises Acts and the Environment Acts

### 3.7 **STATUTORY OBLIGATIONS**

- 3.7.1 To comply with all Laws (including the Premises Acts) affecting the Property the physical condition or the user of them or the use of any Fixtures and Fittings in them

- 3.7.2 As soon as reasonably practicable to give written notice to the Landlord of anything arising or being in the Property which may endanger or adversely affect health or safety and which might give rise to a duty of care imposed by common law or statute on the Landlord in favour of the Tenant or any other person
- 3.7.3 The Tenant shall comply with its obligations, requirements and duties under the Construction (Design and Management) Regulations 2007 (“CDM Regulations”) in relation to any works carried out at the Property, including all requirements in relation to the provision and maintenance of a health and safety file for the Property, which the Tenant shall maintain and shall give to the Landlord on the Termination Date
- 3.7.4 The Tenant shall elect to be treated as the only client as defined under the CDM Regulations in respect of any works carried out at the Property pursuant to Regulation 8 of the CDM Regulations
- 3.7.5 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord’s obligations under the CDM Regulations

### 3.8 YIELD UP

On the Termination Date quietly to yield up the Property to the Landlord with vacant possession (subject only to any lease granted to a statutory undertaker) in accordance with the proper performance of the Tenant's covenants contained in this Lease and with all refuse and (unless the Landlord notifies the Tenant to the contrary prior to the Termination Date) all Tenant's fixtures and fittings lettering and signs put up by the Tenant duly removed

### 3.9 USE

- 3.9.1 Not to carry on upon the Property any noisy noxious offensive or dangerous trade or occupation provided that the proper use of the Property for the purposes permitted by clause 3.9.3 shall not be a breach of this Clause
- 3.9.2 Not to use the Property for any illegal or immoral purpose
- 3.9.3 Without prejudice to the preceding covenants in this Clause not to use the Property otherwise than:-
- (a) for the purposes of the provision of educational services by the Tenant (as set out in any charitable objects of and in accordance with the memorandum and articles of association of the Tenant from time to time) and
  - (b) for community fundraising and recreational purposes which are ancillary to the use permitted under Clause 3.9.3 (a3.9.4 It is acknowledged by the Landlord and the Tenant that the Funding was awarded to the School for the provision of childcare and young family support services being provided from the part of the Property forming the former children’s centre accommodation and in turn the Tenant shall (as part of the use detailed in the clause 3.9 above) provide services that were previously provided from the Property by the Council’s “Sure Start Services” which for the avoidance of any doubt shall be provided from the Property all year round to include (but not limited to) the following:-

The provision of a full time learning mentor delivering a “positive parenting programme” (Triple P) common assessment frameworks (CAF’s) to improve multi-agency working parenting workshops, drop in family support sessions and signposting advice for preschool families



- The provision of a weekly baby clinic
- Extended services provision of a before and after school club each day
- Use by the community residents association
- The provision of a community information service for users

3.9.5 In the event that the Tenant proposes to change the use of the former children's centre forming part of the Property then the Tenant must seek the Landlord's prior consent in writing to ensure that any change of use remains consistent with the terms of the Funding and no clawback by the DfE in respect of Funding

### 3.10 **PLANNING AND ENVIRONMENTAL MATTERS**

- 3.10.1 To provide to the Landlord copies of any plans specifications applications consents and permissions relating to applications under the Planning Acts and to deal with any queries that the Landlord acting reasonably may raise
- 3.10.2 So often as occasion requires to obtain all consents and permissions required to authorise the use from time to time of the Property and the carrying out of any development (within the meaning of the Planning Acts) on the Property
- 3.10.3 To pay and satisfy any charges that may hereafter be imposed under the Planning Acts in respect of the carrying out or maintenance of any such development
- 3.10.4 To give written notice to the Landlord of the granting or refusal of any planning permission within twenty days after its receipt by the Tenant
- 3.10.5 If the Tenant receives any compensation because of any restriction placed upon the use of the Property under or by virtue of the Planning Acts then if this Lease is determined by surrender or re-entry immediately to make such provision as is just and equitable for the Landlord to receive due benefit from such compensation

### 3.11 **NOTICES**

As soon as reasonably practicable following receipt to provide to the Landlord a copy of any communication or notice which may give rise to a liability on the part of the Landlord or which may adversely affect the value or nature of the Landlord's interest in the Property

### 3.12 **DEALINGS**

- 3.12.1 Not to part with or share the possession or occupation of the whole or any part or parts of the Property Provided that the Tenant may share occupation of part of the Property with a body or individual providing services or facilities which are ancillary to and within the uses referred to in clause 3.9.3 where no relationship of landlord and tenant arises as a result of such occupation
- 3.12.2 Not to hold the Property or any part or parts of the Property or this Lease on trust for another
- 3.12.3 Subject to sub-clause 3.12.4 not to assign or transfer any part or parts or the whole of the Property
- 3.12.4 The Tenant is permitted to assign or transfer the whole of the Property to a successor charitable or public body where the Secretary of State has given approval in writing to such an assignment or transfer
- 3.12.5 Not to underlet the whole of the Property

3.12.6 Not to underlet any part or parts of the Property

3.12.7 Not to charge the whole or any part or parts of the Property without the Landlord's prior written consent

**3.13 RIGHTS OF LIGHT AND ENCROACHMENTS**

Not to obstruct any windows or lights belonging to the Property nor to permit any encroachment upon the Property which might be or become a detriment to the Landlord and in case any encroachment is made or attempted to be made to give immediate notice of it to the Landlord

**3.14 INDEMNITY**

3.14.1 To keep the Landlord indemnified against all actions proceedings costs claims demands and expenses in respect of any liability or alleged liability in respect of any injury to or the death of any person (however the same may be caused) damage to any property moveable or immovable Laws (including the Premises Acts the Planning Acts and the Environment Acts) the infringement disturbance or destruction of any right easement or privilege and every other liability arising directly or indirectly out of any defect in or the condition or use of the Property or anything done or omitted to be done on them or any breach of the Tenant's obligations in this Lease

3.14.2 To notify the Landlord in writing immediately upon any of the events or matters referred to in sub-clause 3.14.1 occurring or arising

**3.15 COSTS**

To pay to the Landlord on demand all reasonable and proper costs charges and expenses (including legal costs and surveyors' fees and other professional fees and any charges and/or commission payable to a bailiff) losses and liabilities which may be incurred by the Landlord:-

3.15.1 in connection with the preparation and service of any notice (including any schedule of dilapidations) served under this Lease relating to the repair or condition of the Property whether during the Term or within three months after the Termination Date

3.15.2 in connection with any application by the Tenant for any licence approval permission or consent required under the terms of this Lease whether or not the application is withdrawn or the licence approval permission or consent is refused (save where refused unreasonably contrary to the terms of this Lease) or is granted (save where granted subject to conditions declared by a court of competent jurisdiction to be unreasonable)

3.15.3 in or in contemplation of claiming or recovering any arrears of Rent or rents or in connection with or arising out of any breach by the Tenant of any of the Tenant's obligations hereunder whether or not the Landlord proves such matters by proceedings in any Court

**3.16 VAT**

3.16.1 To pay VAT upon the Rent and upon any other sums payable by the Tenant under this Lease and in relation to any other supply of goods or services (within the meaning of section 5 and schedule 4 of the Value Added Tax Act 1994) made by the Landlord to the Tenant under this Lease so far as such tax is from time to time properly chargeable upon the same and in relation to taxable supplies made by the Landlord to the Tenant the Landlord must deliver to the Tenant a VAT invoice addressed to the Tenant

3.16.2 Where the Tenant has agreed to reimburse or indemnify the Landlord in respect of any payment made by the Landlord under the terms of or in connection with this Lease also to

reimburse any VAT paid by the Landlord on such payment unless the VAT is actually recovered by the Landlord as an input in relation to supplies to the Landlord

### 3.17 **INTEREST ON ARREARS**

If any sums from time to time payable by the Tenant to the Landlord under this Lease are not paid to the Landlord within 14 days of the date when such sums became due (whether demanded or not) or are tendered to the Landlord but the Landlord reasonably refuses to accept them so as to preserve any rights the Landlord has to pay to the Landlord (without prejudice to any other right remedy or power available to the Landlord) interest on such sums (both before and after any judgement) from the date when such sums first became due until the date of actual payment inclusive of both dates at the Interest Rate

## 4. **LANDLORD'S COVENANTS**

The Landlord covenants with the Tenant:-

### 4.1 **QUIET ENJOYMENT**

That the Tenant may peaceably and quietly hold and enjoy the Property during the Term without any interruption or disturbance by the Landlord or any person rightfully claiming through or under the Landlord.

4.2 To observe the Landlord's covenants under the Substation Lease 1 and the Substation Lease 2

4.3 To pay and indemnify the Tenant against costs and expenses as referred to in paragraphs 5 and 6 of Schedule 3

## 5. **INSURANCE**

5.1 The Tenant covenants with the Landlord:-

5.1.1 to keep the Property insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Tenant is advised represents the Reinstatement Value of the Property from time to time

5.1.2 to pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Property

5.1.3 following the incidence of damage to or destruction of the Property and subject to receipt of all necessary consents licences permissions and the like to apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Property (provided that this covenant should be satisfied if the Tenant provides premises not necessarily identical to the Property as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable provided that in case it shall be impossible or impracticable to reinstate the Property in accordance with the provisions of this Clause 5 within 3 years of the date of damage or destruction occurring either party may serve written notice on the other to terminate this Lease and upon service of such notice this Lease shall immediately cease and determine but without prejudice to the rights of either party against the other in respect of any prior breach of any obligation contained in this Lease and any monies received under the said policy of insurance whether before or after the termination of this Lease shall be paid by the Tenant on receipt to the Landlord and shall as between the Landlord and the Tenant belong to the Landlord absolutely

5.1.4 to produce to the Landlord a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases)

5.1.5 not to knowingly do anything whereby any policy of insurance relating to the Property may become void or voidable

5.2 The Tenant further covenants with the Landlord to insure against liability in respect of property owners' and third party risks

6. **PROVISOS**

6.1 **RE-ENTRY**

Where there occurs a breach by the Tenant of Clause 3.9 and/or 5.1.2 of this Lease and the Landlord has served written notice specifying such breach and the remedial action required by the Tenant and if within a reasonable period (taking account of the breach complained of) the Tenant has not taken steps to remedy such breach or the Tenant is dissolved or struck off or removed from the Register of Companies or otherwise ceases to exist then it is lawful for the Landlord or any person authorised by the Landlord at any time afterwards to re-enter upon the Property or any part of it in the name of the whole and thereupon the Term absolutely determines without prejudice to any right of action of the Landlord in respect of any breach of the Tenant's obligations contained in this Lease

6.2 **LANDLORD'S RIGHTS ON FORFEITURE**

The Landlord's right to forfeit this Lease is not affected by any acceptance of or demand for rent or any action which would affirm this Lease by the Landlord with knowledge of a breach of any of the Tenant's covenants contained in this Lease and the Tenant is not in any proceedings for forfeiture or otherwise entitled to rely upon any such acceptance demand or affirmation as aforesaid as a defence provided that this provision only applies to any acceptance of or demand for rent or affirmation of this Lease made during such period as may in all the circumstances be reasonable for enabling the Landlord to conduct negotiations with the Tenant for remedying the breach

6.3 **SERVICE OF NOTICES**

Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 applies to all notices which may require to be served under the terms of this Lease except that section 196 is deemed to be amended as follows:-

6.3.1 the final words of section 196(4) "and that service ..... be delivered" are deleted and there is substituted "and that service is deemed to have been made on the third working day after the registered letter has been posted" and "working day" means any day from Monday to Friday (inclusive) other than Christmas Day Good Friday and any statutory or bank holiday

6.3.2 any notice or document is also sufficiently served if sent by telephonic facsimile transmission to the party to be served and that service is deemed to be made on the day of transmission if transmitted before 4.00 pm on a working day but otherwise on the next following working day

6.3.3 if the party to whom any notice to be served consists of more than one person the service of notice upon one of such persons constitutes service upon all of them

6.3.4 any notice to be given by a party may be given by that party's solicitor or agent and when addressed to a party is not rendered invalid by reason of that party having died become insolvent or changed name whether or not the party serving notice is aware of the fact

**6.4 EXCLUSION OF S.62 L.P.A.**

The operation of section 62 of the Law of Property Act 1925 is excluded from this Lease and the only rights granted to the Tenant are those expressly set out in this Lease and the Tenant is not by virtue of this Lease deemed to have acquired or be entitled by any means whatsoever (other than express grant) to any easement from or over any adjoining or neighbouring land or premises now or at any time after the date of this Lease belonging to the Landlord and not comprised in this Lease

**6.5 GOVERNANCE**

6.5.1 This Lease is governed by English law

6.5.2 The parties submit to the exclusive jurisdiction of the High Court of Justice in England

**6.6 AGREEMENT TO EXCLUDE SECTIONS 24 TO 28 OF THE 1954 ACT**

6.6.1 The Landlord and the Tenant agree pursuant to section 38A(1) of the 1954 Act that the provisions of sections 24 to 28 (inclusive) of the 1954 Act are excluded in relation to the tenancy created by this Lease

6.6.2 The Tenant confirms that:-

(a) the Landlord served on the Tenant a notice ("the Notice") applicable to the tenancy created by this Lease on        day of        2016 in accordance with section 38A (3) (a) of the 1954 Act and

(b) the Tenant or a person duly authorised by the Tenant made a declaration or a statutory declaration in relation to the Notice on the        day of        2016 in accordance with the requirements of section 38A (3) (b) of the 1954 Act

before the Tenant entered into this Lease or (if earlier) became contractually bound to do so

**6.7 TERMINATION**

6.7.1 This Lease shall automatically terminate on the termination of the Funding Agreement in circumstances where there is no other Funding Agreement in existence

6.7.2 The Tenant shall give written notice to the Landlord as soon as possible after becoming aware that the Funding Agreement may be liable to termination including where a notice terminating the Funding Agreement is served on the Tenant and the notice served on the Landlord shall specify the date (or likely date) of termination of the Funding Agreement

6.7.3 The Tenant shall give written notice to the Landlord at the same time as the Tenant serves any notice terminating the Funding Agreement and such notice shall specify the date (or likely date) of termination of the Funding Agreement

6.7.4 On the termination of this Lease under Clause 6.7.1 everything contained in the Lease ceases and determines but without prejudice to any claim by either party against the other in respect of any antecedent breach of any obligation contained in this Lease

**7. LANDLORD'S POWERS**

7.1 The Landlord enters into this Lease pursuant to its powers under sections 111 120 122 and 123 of the Local Government Act 1972 the Education Act 1996 Section 2 of the Local Government Act 2000 and all other powers so enabling and warrants that it has full power to enter into this Lease and to perform all obligations on its part herein contained

7.2 Nothing in this Lease shall fetter the Landlord in the proper performance of its statutory functions

8. **NEW TENANCY**

This Lease is a new tenancy for the purposes of the 1995 Act

9. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

A person who is not a party to this Lease has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Lease but this does not affect any right or remedy of a third party which exists or is available apart from that Act

10. **CHARITY**

The Property will as a result of this Lease be held by the Tenant as an exempt charity

**EXECUTED AS A DEED** by the parties on the date which first appears in this Lease.

EXECUTED (but not delivered until the date Hereof) AS A DEED by affixing the Common Seal of **THE COUNCIL OF THE CITY OF COVENTRY** in the presence of:-

Authorised Signatory

EXECUTED (but not delivered until the date hereof AS A DEED by affixing the Common Seal of [ ] in the presence of:-

Director

Secretary

## **SCHEDULE 1**

### **The Property**

**ALL THAT** land and buildings situate at the Finham Primary School situated in Green Lane in the City of Coventry shown edged red on the Plan and include the following so far as the same may exist at any time during the Term:-

- (a) all Conduits exclusively serving such Property and
- (b) all Fixtures and Fittings (save for those that belong to the Tenant)

## **SCHEDULE 2**

### **Rights Granted**

#### **1. SERVICES**

The right in common with the Landlord and all others from time to time so entitled and with the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed save as provided below) for the Tenant to connect into (in so far as there are no connections) and to pass Amenities to and from the Property through Conduits now or at any time during the Term laid in under or upon any adjoining land of the Landlord PROVIDED that the Landlord has the right at any time or times during the Term:-

- 1.1 to refuse consent for the Tenant to connect into any Conduits if in the reasonable opinion of the Landlord the Conduits are insufficient to bear the extra load which would be likely to result from the proposed connection by the Tenant and
- 1.2 to divert or vary the positions of the Conduits upon giving reasonable prior notice to the Tenant (except in case of emergency) (which interruption the Landlord must however seek to minimise so far as is reasonably possible)

#### **2. SUPPORT**

A right of support and protection to the Property from the Landlord's adjoining land



### SCHEDULE 3

#### Rights Excepted and Reserved

1. The full and free right for the Landlord and their successors in title to build upon alter add to extend redevelop or otherwise use any part of the adjoining land or property now or formerly or hereafter belonging to the Landlord to the fullest extent as if this Lease had not been granted notwithstanding that such buildings or user may affect the access of light or air coming to the Property
- 1.1 The free flow of water soil gas electricity and other supplies from any adjoining land belonging to the Landlord through the sewers drains pipes and channels now or in future existing in or under the Property and the right to make connections with such sewers drains pipes and channels or any of them for the purpose of exercising such right
- 1.2 The right during the Term to create any easement or install or maintain any sewers pipes drains wires or channels in over or under the Property for the benefit of any adjoining or neighbouring land belonging to the Landlord
- 2 The right for the Landlord and their licensees and tenants for the time being of adjoining Property belonging to the Landlord if so authorised in writing by the Landlord and their servants agents and workmen at all reasonable times after reasonable notice (of not less than 5 day's notice in writing save in the case of emergency where no notice is required) to enter the Property for the purpose of executing any work on or in connection with such adjoining property which otherwise cannot be conveniently executed the person or persons exercising such right causing as little interference or damage to the Property as is reasonably practicable and making good all damage caused thereby
3. The right at any time throughout the Term (upon giving to the Tenant no less than five (5) days prior notice in writing save in the case of an emergency where no notice is required) to enter the Property to:-
  - 3.1 inspect cleanse connect lay repair remove relay replace with other alter or execute any works whatever in connection with the pipe sewer drains and channels referred to in Clause 2 of this Schedule
  - 3.2 carry out any work or do anything whatsoever compromised within the Landlord's obligations in this Lease or under any legislation whether or not the Tenant is obliged or liable to make a contribution
  - 3.3 exercise any of the rights granted to the Landlord by this Lease
  - 3.4 view the state and condition and repair of the premises
  - 3.5 take schedules or inventories of fixtures and fittings and other items to be yielded up on the expiration of the Term
4. The right of support and protection by the Property for such other parts of the adjoining land and property of the Landlord as requires such support and protection  

Subject to the Landlord in the exercise of the aforesaid rights causing as little damage and inconvenience to the Property as reasonably possible and making good to the reasonable satisfaction of the Tenant all damage caused to the Property
5. From time to time during the Term the right (upon giving to the Lessee no less than two (2) months notice in writing) the right for the Council and its employees and visitors to use the whole or part of the Property as a polling station on dates and times as are necessary for the purposes of facilitating public voting during local general or European elections

6. From time to time during the Term the right for the Landlord to use the Property as an "Emergency Centre" in the event that there is a major incident in the City of Coventry that requires the use of buildings in cases of emergency provided that in such an event the Lessee will co-operate with the Council and use every effort to assist the Council's use of the premises notwithstanding any hiring arrangements that are in place for use of the Property at that time

**Appendix 1B**

**Draft Lease for Site Services Officer Property at 411 Green Lane**

**Dated**

**2016**

**(1) The Council of the  
City of Coventry  
(Landlord)**

**(2) Finham Park Multi Academy Trust  
(Tenant)**

Draft Lease/Feb'16

**Lease**

Site Service Offices / Residential  
Accommodation at 411 Green Lane  
In the City of Coventry

**Term:** 125 years

(Subject to Option to Determine

**Rent:** Peppercorn (if demanded)

Excluded from the Landlord and Tenant Act  
1954 Part II

**Ref: L/JS/RSN 17141**

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## LAND REGISTRY REQUIRED WORDING FOR PRESCRIBED CLAUSES LEASE

LR1.	Date of lease:		2016
LR2.	Title number(s):	LR2.1	Landlord's title number(s): WK31900
		LR2.2	Other title number(s): None
LR3.	Parties to this lease:		
	Landlord:		The Council of the City of Coventry Council House Earl Street Coventry CV1 5RR
	Tenant:		Finham Park Multi Academy Trust  (Company Registered Number [                    ])
LR4.	Property:  (referred to in the remainder of this lease as the "Property")		Please see the definition of "Property" in clause 1.1 and Schedule 1
LR5.	Prescribed statements etc:		None
LR6.	Term for which the Property is leased:  (referred to in the remainder of this lease as the "Term")		The term is as follows: 125 years from and including the                    day of                    2016
LR7.	Premium:		None
LR8.	Prohibitions or restrictions on disposing of this lease:		This lease contains a provision that prohibits or restricts dispositions
LR9.	Rights of acquisition etc:		
		LR9.1	Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land:  None
		LR9.2	Tenant's covenant to (or offer to) surrender this lease:  None

		LR9.3	Landlord's contractual rights to acquire this lease:  None
LR10.	Restrictive covenants given in this lease by the Landlord in respect of land other than the Property:		None
LR11.	Easements:		
		LR11.1	Easements granted by this lease for the benefit of the Property:  The easement(s) set out in the Second Schedule to this lease
		LR11.2	Easements granted or reserved by this lease over the Property for the benefit of other property  The easement(s) set out in the Third Schedule to this lease
LR12.	Estate rentcharge burdening the Property:		None
LR13.	Application for standard form of restriction:		None
LR14.	Declaration of trust where there is more than one person comprising the Tenant:		The Tenant is more than one person. They are to hold the Property on trust.



and civil commotion labour disturbance and malicious damage and such other risks as the Tenant insures

against from time to time Subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters Provided that if in respect of any period of time the Tenant is unable to effect insurance against any one or more of such risks or upon terms or at a premium which the Tenant considers reasonable then during such period such risk or risks are deemed to be excluded from the definition of "Insured Risks"

**"Interest"**

interest at the rate of four per cent (4%) per annum above HSBC Bank plc Base Rate for the time being in force (both before and after any judgment) such interest to be compounded with rests on the usual quarter days or if such Base Rate ceases to be published then at the rate of 1 per cent per annum above the rate at which the Landlord could reasonably borrow from time to time

**"Law"**

any statute or any order instrument or regulation made under it or any notice or order issued by a government department the legislative making institutions of the European Union minister or local public regulatory or other authority

**"Lease"**

this Lease as varied from time to time together with any other deed document or agreement at any time during the Term amending supplemental or collateral to it

**"Outgoings"**

all present and future rates taxes duties charges assessments impositions and outgoings whatsoever (whether parliamentary local or of any other description including capital or non-recurring and including any novel expenses)

**"Plan"**

the plan annexed to this Lease

**"Planning Acts"**

the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Hazardous Substances) Act 1990 the Planning (Consequential Provisions) Act 1990 the Planning and Compensation Act 1991 the Planning and Compulsory Purchase Act 2004 and any other Law or Laws of a similar nature in force at any time during the Term

**"Premises Acts"**

the Occupiers' Liability Act 1957 the Factories Act 1961 the Offices Shops and Railway Premises Act 1963 the Fire Precautions Act 1971 the Defective Premises Act 1972 the Health and Safety at Work etc. Act 1974 the Occupiers' Liability Act 1984 and any other Law or Laws regulating the safety of premises and those occupying or visiting the same in force at any time during the Term

**"President"**

the President of the Institution of Chartered Surveyors

**"Property"**

the property described in Schedule 1

**"Reinstatement Value"**

the full cost of reinstating the Property including:-

- (a) temporarily making the Property safe and protecting any adjoining structures



- (b) debris removal demolition and site clearance
- (c) obtaining planning and any other requisite consents or approvals
- (d) complying with the requirements of any Law
- (e) architects' surveyors' and other fees incurred by the Tenant in relation to the reinstatement
- (f) all construction costs
- (g) any VAT chargeable on any of the reinstatement costs (save where the Tenant is able to recover such VAT as an input in relation to supplies made by the Tenant)

<b>"Rent"</b>	a peppercorn (if demanded)
<b>"Secretary of State"</b>	the Secretary of State for Education or such other Minister of the Crown who is a successor to such person and who is party to the Funding Agreement with the Tenant at the relevant time
<b>"School"</b>	Finham Primary School Green Lane Coventry
<b>"Term"</b>	125 years from and including the Term Commencement Date
<b>"Term Commencement Date"</b>	day of 2016
<b>"Termination Date"</b>	the date of expiration or sooner determination of the Term
<b>"the 1954 Act"</b>	the Landlord and Tenant Act 1954
<b>"the 1995 Act"</b>	the Landlord and Tenant (Covenants) Act 1995
<b>"VAT"</b>	Value Added Tax or any equivalent tax which may at any time during the Term be imposed in substitution for it or in addition to it and all references to rents or other sums payable by the Tenant are exclusive of VAT

- 1.2 In interpreting this Lease:-
- 1.2.1 references to Clauses pages and Schedules are to Clauses and pages of and Schedules to this Lease unless stated otherwise
  - 1.2.2 the expression "Landlord" includes the person for the time being entitled to the immediate possession of the Property on the expiry of the Term
  - 1.2.3 the expression "Tenant" includes the person in whom for the time being the Tenant's interest under this Lease is vested and its successors in title
  - 1.2.4 where reference is made to a statute this includes all prior and subsequent enactments amendments and modifications relating to that statute and any subordinate legislation made under such statute

- 1.2.5 references to a "person" include any individual firm unincorporated association or body corporate and words importing the singular number include the plural number and vice versa and words importing one gender include all genders
- 1.2.6 if the Tenant is or are at any time more than one person any reference to the Tenant is deemed to refer to each such person and any obligation on the part of the Tenant takes effect as a joint and several obligation
- 1.2.7 any covenant by the Tenant not to carry out any action is to be construed as if it is (where appropriate) additionally a covenant by the Tenant not to permit or suffer such action to be done
- 1.2.8 the words "include" and "including" are to be construed without limitation and in construing this Lease the ejusdem generis principle does not apply and general words are not to be given a restrictive meaning because they are followed by particular examples intended to be embraced by the general words
- 1.2.9 a reference to an act or omission of the Tenant includes an act or omission of any undertenant and any other person deriving title under the Tenant and includes an act or omission of their respective employees and visitors
- 1.2.10 a reference to the Property includes any part of it except where the word is used in Clause 3.12
- 1.2.11 a reference to the end of the Term or to the Termination Date is to the end of the Term however it terminates
- 1.2.12 a consent of the Landlord shall be valid if it is either:-
- (a) given in writing and signed by a person duly authorised on behalf of the Landlord; or
  - (b) (if required by the Landlord after any request for consent from the Tenant but prior to consent being given) it is by deed and
- if a consent is not by deed it will not affect the Landlord's ability to require that any other consent should be by deed
- 1.2.13 any notice given to the Landlord shall not be valid unless it is in writing
- 1.2.14 the Landlord is entitled to withhold its consent where it requires the corresponding consent of any mortgagee or superior landlord of the Property until it obtains that consent (and the Landlord shall use all reasonable endeavours to obtain such consent and shall ensure that any charges or superior leases created after the date of this Lease shall contain obligations on the mortgagee or superior landlord not unreasonably to withhold or delay consent in circumstances where the Landlord's consent cannot be unreasonably withheld or delayed under this Lease)
- 1.2.15 a right of the Landlord or anyone else to have access to or entry upon the Property extends to any superior landlord and any mortgagee of the Landlord's Property and to anyone authorised by the Landlord or any superior landlord or mortgagee and includes a right of entry with workmen equipment and materials
- 1.2.16 the table of contents and headings to Clauses paragraphs and Schedules do not affect the construction of this Lease
- 1.2.17 a right granted by the Landlord is granted in common with all other persons entitled to it and/or authorised by the Landlord to exercise it
- 1.2.18 a right excepted or reserved to the Landlord is also reserved to any other person entitled to it and/or authorised by the Landlord

- 1.2.19 where the Landlord is entitled to enter the Property on giving notice it is also entitled to enter without notice in emergency and may break and enter if it considers it necessary
- 1.2.20 nothing entitles the Tenant to enforce any obligation given by anyone to the Landlord
- 1.2.21 any person undertaking any obligation under or by virtue of this Lease which is a 'landlord covenant' for the purposes of the 1995 Act does so only in respect of the period of time during which the immediate reversion to this Lease is vested in such person and not further or otherwise
- 1.2.22 any works (whether of repair decoration alteration or otherwise) that the Tenant is permitted or obliged to carry out in accordance with this Lease shall be carried out in accordance with good modern practice
- 1.2.23 a provision of this Lease which is void or unenforceable shall be severed from all other provisions of this Lease and the remaining provisions shall continue to have effect
- 1.2.24 if a provision of this Lease extends beyond the limitations set by any Law or rule of law but if it were not so extended would remain unaffected by the Law or rule of law the provision is deemed to be varied so as not to extend beyond the limitations
- 1.2.25 if any matter is referred to arbitration pursuant to this Lease:-
- (a) it is to be conducted in accordance with the Arbitration Act 1996 and
  - (b) the arbitrator has no power:-
    - (i) to order rectification setting aside or cancellation of this Lease
    - (ii) to direct that the recoverable costs of the arbitration or any parts of the arbitral proceedings will be limited to a specific amount
    - (iii) where there are provisions in this Lease for the payment of interest at a specified rate to award interest whether in addition to or in substitution for such interest provisions
- 1.2.26 if any matter in this Lease is to be determined by an arbitrator:-
- (a) he is to be appointed by agreement between the Landlord and the Tenant or at the request and option of either of them is to be nominated by the President
  - (b) if he dies delays or declines to act the President may on the application of either the Landlord or the Tenant discharge him and appoint another to act in his place in the same capacity and
  - (c) if either the Landlord or the Tenant pays his fees and expenses it may recover the proportion (if any) the other party was obliged to pay from that other party as a debt recoverable on demand
- 1.2.27 wherever and to the extent that any provision of this Lease would or might contravene the provisions of section 25 of the 1995 Act then:-
- (a) such provision is to take effect only in so far as it may do so without contravening section 25 of the 1995 Act (and where such provision extends beyond the limits permitted by section 25 of the 1995 Act that provision is to be varied so as not to extend beyond those limits) and
  - (b) where such provision is incapable of having any effect without contravening section 25 of the 1995 Act this Lease is to be construed and interpreted as if such provision were deleted and

- (c) the legality validity and enforceability of any of the remaining provisions of this Lease is not in any way to be affected or impaired as a result

## 2. **DEMISE RENTS AND OTHER PAYMENTS**

- 2.1 The Landlord demises the Property to the Tenant for the Term (subject to the provisions for earlier termination contained in this Lease) the Tenant paying therefor by way of rent throughout the Term without any deduction counterclaim or set off (whether legal or equitable) of any nature whatsoever:-
  - 2.1.1 the Rent (if demanded)
  - 2.1.2 all other sums (including VAT) due under this Lease from the Tenant to the Landlord
- 2.2 The Property is demised:-
  - 2.2.1 together with the rights specified in Schedule 2
  - 2.2.2 excepting and reserving to the Landlord and all others now entitled (or who may become entitled) and all others authorised by them (to include any adjoining or neighbouring owners or occupiers) as specified in Schedule 3
  - 2.2.3 subject to any rights (if any) affecting the Property which are still subsisting and capable of taking effect

## 3. **TENANT'S COVENANT**

The Tenant covenants with the Landlord as follows:-

### 3.1 **RENT AND PAYMENTS**

To pay the Rent and all other sums reserved as rent by this Lease at the times and in the manner at and in which they are reserved in this Lease

### 3.2 **OUTGOINGS**

- 3.2.1 Promptly to pay the Outgoings which are now or may during the Term be payable in respect of the Property or its owner or occupier except any payment occasioned by any disposition of or dealing with the ownership of any estate or interest expectant in reversion on the Term
- 3.2.2 To pay for all Amenities exclusively used by or available to the Property (including all standing charges)
- 3.2.3 To observe and perform all present and future regulations and requirements of the authorities or companies supplying or providing the Amenities

### 3.3 **REPAIR AND UPKEEP**

3.3.1 At all times during the Term to keep the Property (including for the avoidance of doubt all buildings structures landscaping and other erections) clean and tidy and make good:-

(a) any damage it causes to the Property and/or

(b) any deterioration to the condition of the Property that may arise from the Term Commencement Date

provided that the Tenant shall not be in breach of this covenant if and for so long as disrepair arises due to damage caused to the Property by any of the Insured Risks and the Tenant is diligently pursuing its insurance claim and reinstating such damage

3.3.2 To notify the Landlord in writing immediately if any structural damage occurs to the Property

3.3.3 to maintain and repair all the boundary walls fences and hedges serving the Property

#### 3.4 ACCESS OF LANDLORD AND NOTICE TO REPAIR

To permit the Landlord and all persons authorised by the Landlord (with or without equipment) upon reasonable prior notice to the Tenant (but at any time without notice in case of emergency) to enter the Property as follows:-

3.4.1 in the final 3 years of the Term in order to take inventories of any Fixtures and Fittings to be yielded up at the end of the Term

3.4.2 at reasonable intervals during the Term in order to view and examine the state of repair and condition of the Property and to give to the Tenant or the Tenant's agent or leave on the Property notice in writing to the Tenant of all breaches of any of the tenant covenants in this Lease relating to the condition or repair of the Property ("Repair Notice") and the Tenant covenants (subject to having obtained any necessary consents to any required works, which the Tenant shall use all reasonable endeavours to obtain as soon as possible) to repair and make good the Property according to such notice and the covenants in that behalf contained in this Lease within the following time periods:-

(a) where (b) and (c) below do not apply or where the state of repair is causing a breach of health and safety or other legislation or is causing structural damage ("Safety Breach"), the works shall be commenced within the period of 56 days after the service of the Repair Notice and shall be completed diligently thereafter

(b) where there is no Safety Breach, if the Tenant does not immediately have the funds to carry out such works but could complete the works within a reasonable period without requiring further funding under the Funding Agreement it shall demonstrate this to the Landlord by providing to the Landlord within 56 days of the service of the Repair Notice:-

(i) a statement of the maintenance budget for the Property (included within the funding already received under the Funding Agreement) and the sums expended that financial year to date on the repair and maintenance of the Property ("Funding Statement") and

(ii) a programme of works setting out a reasonable time period for the works to be carried out taking into account the nature of the disrepair and the funds available

and the works shall be commenced and carried out within the periods set out in the programme of works referred to at (ii) above

(c) where there is no Safety Breach and where the Tenant cannot demonstrate that it can carry out the works within a reasonable time under (b) above but requires to make an application ("Funding Application") to the Secretary of State for funding under the Funding Agreement in order to carry out such works, the relevant section of works shall be commenced as soon as reasonably practicable after the Secretary of State grants permission under the programme of works agreed pursuant to the Funding Application ("Works Programme")

and if the Tenant fails satisfactorily to comply with such notice in accordance with (a) (b) or (c) above the Landlord and all persons authorised by the Landlord are entitled at any time without notice (but without prejudice to the right of re-entry contained in this Lease)

to enter the Property with all necessary equipment to repair and make good the Property in accordance with the covenants and provisions contained in this Lease and the expense of such repairs together with all reasonable legal and surveyors' fees properly incurred in connection with this sub-clause must be repaid by the Tenant to the Landlord upon demand and on a full indemnity basis as a contractual debt

- 3.4.3 where the Tenant has served notice on the Landlord pursuant to Clause 3.3.2 of the occurrence of structural damage to the Property then to permit the Landlord to enter onto the Property to view and examine the state of repair and condition of the Property
- 3.4.4 at any time during the Term to view the Property in connection with any dealing or proposed dealing (by way of sale mortgage or otherwise) with the Landlord's reversionary interest in the Property
- 3.4.5 (in circumstances only where the Landlord may have a liability under Law or under this Lease) to carry out such tests inspections and surveys as the Landlord reasonably requires
- 3.4.6 at any time during the Term to fix and retain without interference upon any suitable part or parts of the Property one or more notice boards for reletting (but in the case of reletting only within six months before the Termination Date) or selling at any time the Landlord's reversionary interest in the Property
- 3.4.7 at any time during the Term to exercise any rights reserved by this Lease and to comply with any obligations of the Landlord (whether arising under this Lease or otherwise)
- 3.4.8 at reasonable intervals during the Term in order to determine whether the Tenant has complied with all its obligations in this Lease (save that, for the avoidance of doubt, the Landlord shall not be entitled to inspect the financial records of the Tenant)

Provided that any exercise of the above rights by the Landlord does not constitute an action for forfeiture by the Landlord or evidence an intention to accept or effect the surrender of the Term and provided further that the exercise of the above rights by the Landlord shall not be in such a manner as materially to restrict or interrupt the operation of the school on the Property by the Tenant, shall cause as little damage as reasonably practicable and shall (save in relation to emergency access) be in accordance with the reasonable requirements of the Tenant in relation to the security of the Property and the health and safety of the students and others at the Property or School, and the Landlord shall make good any damage caused to the Property as soon as reasonably practicable

### 3.5 **ALTERATIONS AND ADDITIONS**

- 3.5.1 Not to commit any act of waste
- 3.5.2 Not to erect any buildings or other structures on the Property nor make any structural or external alterations additions or variations to any structures for the time being on the Property without the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed) save that the Landlord can only refuse such consent if:-
  - (a) such erection alteration addition or variation will adversely affect the Landlord's statutory obligations as a landlord or as a local authority and/or
  - (b) such erection alteration addition or variation will have an adverse effect on the structural integrity of any structures on the Property or any part or parts of any structures on the Property and/or
  - (c) such erection alteration addition or variation will adversely affect the value of the Landlord's reversionary interest in the Property

- 3.5.3 As part of the application to the Landlord for its consent pursuant to Clause 3.5.2 the Tenant shall:-
- (a) submit to the Landlord adequate plans and specifications describing the proposed erection alteration addition or variation and shall consult with the Landlord on the proposed erection alteration addition or variation and shall take into account any representations that the Landlord may reasonably make in relation to the matters referred to at Clause 3.5.2 (a) (b) and (c)
  - (b) make any necessary variations or alterations to the plans and specifications in accordance with the reasonable representations of the Landlord pursuant to sub-clause (a) above
  - (c) covenant with the Landlord as to the execution and (if it is agreed between the parties before the works are carried out that they will be reinstated at the determination of the Term) the reinstatement of any of the works as the Landlord may reasonably require
- 3.5.4 In relation to any works permitted pursuant to Clauses 3.5.2 and 3.5.3 above to carry out all such works only in accordance with such plans and specifications as have been provided to and approved by the Landlord in writing or as have been subsequently varied in accordance with any representations of the Landlord
- 3.5.5 After commencing any works of erection alteration addition or variation as permitted pursuant to Clauses 3.5.2 and 3.5.3 above to complete such works as soon as reasonably practicable and in any event no later than by the end of the Term
- 3.5.6 To carry out any works permitted by this Lease in a good and workmanlike manner as soon as reasonably practicable with good quality materials strictly in accordance with all relevant British Standards including codes of practice and the requirements and regulations of all utility companies affected by such works and so that any easements rights privileges or liberties which third parties enjoy in over or under the Property are not interfered with and that no nuisance is caused to the Landlord
- 3.5.7 Not to carry out any erection alteration addition or variation which hinders access to a Conduit

### 3.6 **SIGNS AND ADVERTISEMENTS**

- 3.6.1 To notify the Landlord of the affixing or display on the boundaries of the Property or on the outside of the buildings on the Property of any sign (which expression includes any signboard advertisement hoarding fascia poster placard bill notice or other notification) other than signs which:-
- (a) are required by law to be affixed or displayed or
  - (b) do not require planning permission or
  - (c) are necessary or usual for the authorised use of the Property
- 3.6.2 To display and maintain upon the Property notices required in relation to the Premises Acts and the Environment Acts

### 3.7 **STATUTORY OBLIGATIONS**

- 3.7.1 To comply with all Laws (including the Premises Acts) affecting the Property the physical condition or the user of them or the use of any Fixtures and Fittings in them
- 3.7.2 As soon as reasonably practicable to give written notice to the Landlord of anything arising or being in the Property which may endanger or adversely affect health or safety

and which might give rise to a duty of care imposed by common law or statute on the Landlord in favour of the Tenant or any other person

- 3.7.3 The Tenant shall comply with its obligations, requirements and duties under the Construction (Design and Management) Regulations 2007 ("CDM Regulations") in relation to any works carried out at the Property, including all requirements in relation to the provision and maintenance of a health and safety file for the Property, which the Tenant shall maintain and shall give to the Landlord on the Termination Date
- 3.7.4 The Tenant shall elect to be treated as the only client as defined under the CDM Regulations in respect of any works carried out at the Property pursuant to Regulation 8 of the CDM Regulations
- 3.7.5 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations

### 3.8 **YIELD UP**

On the Termination Date quietly to yield up the Property to the Landlord with vacant possession (subject only to any lease granted to a statutory undertaker) in accordance with the proper performance of the Tenant's covenants contained in this Lease and with all refuse and (unless the Landlord notifies the Tenant to the contrary prior to the Termination Date) all Tenant's fixtures and fittings lettering and signs put up by the Tenant duly removed

### 3.9 **USE**

- 3.9.1 Not to carry on upon the Property any noisy noxious offensive or dangerous trade or occupation provided that the proper use of the Property for the purposes permitted by clause 3.9.3 shall not be a breach of this Clause
- 3.9.2 Not to use the Property for any illegal or immoral purpose
- 3.9.3 Without prejudice to the preceding covenants in this Clause not to use the Property otherwise than for the provision of residential accommodation for the School's site services officer appointed by the Tenant from time to time during the Term

Provided always in the event that at any time during the Term the Tenant ceases to use the Property for the purpose set out in sub-clause 3.9.3 above then the Tenant hereby covenants with the Landlord to give to the Landlord notice in writing within one (1) month of the said use ceasing

### 3.10 **PLANNING AND ENVIRONMENTAL MATTERS**

- 3.10.1 To provide to the Landlord copies of any plans specifications applications consents and permissions relating to applications under the Planning Acts and to deal with any queries that the Landlord acting reasonably may raise
- 3.10.2 So often as occasion requires to obtain all consents and permissions required to authorise the use from time to time of the Property and the carrying out of any development (within the meaning of the Planning Acts) on the Property
- 3.10.3 To pay and satisfy any charges that may hereafter be imposed under the Planning Acts in respect of the carrying out or maintenance of any such development
- 3.10.4 To give written notice to the Landlord of the granting or refusal of any planning permission within twenty days after its receipt by the Tenant
- 3.10.5 If the Tenant receives any compensation because of any restriction placed upon the use of the Property under or by virtue of the Planning Acts then if this Lease is determined by surrender or re-entry immediately to make such provision as is just and equitable for the Landlord to receive due benefit from such compensation



### 3.11 NOTICES

As soon as reasonably practicable following receipt to provide to the Landlord a copy of any communication or notice which may give rise to a liability on the part of the Landlord or which may adversely affect the value or nature of the Landlord's interest in the Property

### 3.12 DEALINGS

3.12.1 Not to part with or share the possession or occupation of the whole or any part or parts of the Property

3.12.2 Not to hold the Property or any part or parts of the Property or this Lease on trust for another

3.12.3 Subject to sub-clause 3.12.4 not to assign or transfer any part or parts or the whole of the Property

3.12.4 The Tenant is permitted to assign or transfer the whole of the Property to a successor charitable or public body where the Secretary of State has given approval in writing to such an assignment or transfer AND simultaneously with the assignment or transfer of the Lease dated                    day of                    2016 made between the parties hereto in respect of the land and buildings forming the School

3.12.7 Not to underlet the whole or any part of the Property save that the underletting of the whole of the Property is permitted without obtaining the Landlord's prior consent to the School's appointed site services officer from time to time during the Term for the use as residential accommodation in accordance with clause 3.9.3 hereof

3.12.6 Not to charge the whole or any part or parts of the Property without the Landlord's prior written consent

### 3.13 RIGHTS OF LIGHT AND ENCROACHMENTS

Not to obstruct any windows or lights belonging to the Property nor to permit any encroachment upon the Property which might be or become a detriment to the Landlord and in case any encroachment is made or attempted to be made to give immediate notice of it to the Landlord

### 3.14 INDEMNITY

3.14.1 To keep the Landlord indemnified against all actions proceedings costs claims demands and expenses in respect of any liability or alleged liability in respect of any injury to or the death of any person (however the same may be caused) damage to any property moveable or immovable Laws (including the Premises Acts the Planning Acts and the Environment Acts) the infringement disturbance or destruction of any right easement or privilege and every other liability arising directly or indirectly out of any defect in or the condition or use of the Property or anything done or omitted to be done on them or any breach of the Tenant's obligations in this Lease

3.14.2 To notify the Landlord in writing immediately upon any of the events or matters referred to in sub-clause 3.14.1 occurring or arising

### 3.15 COSTS

To pay to the Landlord on demand all reasonable and proper costs charges and expenses (including legal costs and surveyors' fees and other professional fees and any charges and/or commission payable to a bailiff) losses and liabilities which may be incurred by the Landlord:-

3.15.1 in connection with the preparation and service of any notice (including any schedule of dilapidations) served under this Lease relating to the repair or condition of the Property whether during the Term or within three months after the Termination Date

3.15.2 in connection with any application by the Tenant for any licence approval permission or consent required under the terms of this Lease whether or not the application is withdrawn or the licence approval permission or consent is refused (save where refused unreasonably contrary to the terms of this Lease) or is granted (save where granted subject to conditions declared by a court of competent jurisdiction to be unreasonable)

3.15.3 in or in contemplation of claiming or recovering any arrears of Rent or rents or in connection with or arising out of any breach by the Tenant of any of the Tenant's obligations hereunder whether or not the Landlord proves such matters by proceedings in any Court

### 3.16 **VAT**

3.16.1 To pay VAT upon the Rent and upon any other sums payable by the Tenant under this Lease and in relation to any other supply of goods or services (within the meaning of section 5 and schedule 4 of the Value Added Tax Act 1994) made by the Landlord to the Tenant under this Lease so far as such tax is from time to time properly chargeable upon the same and in relation to taxable supplies made by the Landlord to the Tenant the Landlord must deliver to the Tenant a VAT invoice addressed to the Tenant

3.16.2 Where the Tenant has agreed to reimburse or indemnify the Landlord in respect of any payment made by the Landlord under the terms of or in connection with this Lease also to reimburse any VAT paid by the Landlord on such payment unless the VAT is actually recovered by the Landlord as an input in relation to supplies to the Landlord

### 3.17 **INTEREST ON ARREARS**

If any sums from time to time payable by the Tenant to the Landlord under this Lease are not paid to the Landlord within 14 days of the date when such sums became due (whether demanded or not) or are tendered to the Landlord but the Landlord reasonably refuses to accept them so as to preserve any rights the Landlord has to pay to the Landlord (without prejudice to any other right remedy or power available to the Landlord) interest on such sums (both before and after any judgement) from the date when such sums first became due until the date of actual payment inclusive of both dates at the Interest Rate

## 4. **LANDLORD'S COVENANTS**

The Landlord covenants with the Tenant:-

### 4.1 **QUIET ENJOYMENT**

That the Tenant may peaceably and quietly hold and enjoy the Property during the Term without any interruption or disturbance by the Landlord or any person rightfully claiming through or under the Landlord.

## 5. **INSURANCE**

5.1 The Tenant covenants with the Landlord:-

5.1.1 to keep the Property insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Tenant is advised represents the Reinstatement Value of the Property from time to time

5.1.2 to pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Property

5.1.3 following the incidence of damage to or destruction of the Property and subject to receipt of all necessary consents licences permissions and the like to apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Property (provided that this covenant should be satisfied if the Tenant provides premises not necessarily identical to the Property as the same existing prior to such damage or

destruction occurring) as soon as may be reasonably practicable provided that in case it shall be impossible or impracticable to reinstate the Property in accordance with the provisions of this Clause 5 within 3 years of the date of damage or destruction occurring either party may serve written notice on the other to terminate this Lease and upon service of such notice this Lease shall immediately cease and determine but without prejudice to the rights of either party against the other in respect of any prior breach of any obligation contained in this Lease and any monies received under the said policy of insurance whether before or after the termination of this Lease shall be paid by the Tenant on receipt to the Landlord and shall as between the Landlord and the Tenant belong to the Landlord absolutely

5.1.4 to produce to the Landlord a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases)

5.1.5 not to knowingly do anything whereby any policy of insurance relating to the Property may become void or voidable

5.2 The Tenant further covenants with the Landlord to insure against liability in respect of property owners' and third party risks

## 6. **PROVISOS**

### 6.1 **RE-ENTRY**

Where there occurs a breach by the Tenant of Clause 3.9 and/or 5.1.2 of this Lease and the Landlord has served written notice specifying such breach and the remedial action required by the Tenant and if within a reasonable period (taking account of the breach complained of) the Tenant has not taken steps to remedy such breach or the Tenant is dissolved or struck off or removed from the Register of Companies or otherwise ceases to exist then it is lawful for the Landlord or any person authorised by the Landlord at any time afterwards to re-enter upon the Property or any part of it in the name of the whole and thereupon the Term absolutely determines without prejudice to any right of action of the Landlord in respect of any breach of the Tenant's obligations contained in this Lease

### 6.2 **LANDLORD'S RIGHTS ON FORFEITURE**

The Landlord's right to forfeit this Lease is not affected by any acceptance of or demand for rent or any action which would affirm this Lease by the Landlord with knowledge of a breach of any of the Tenant's covenants contained in this Lease and the Tenant is not in any proceedings for forfeiture or otherwise entitled to rely upon any such acceptance

demand or affirmation as aforesaid as a defence provided that this provision only applies to any acceptance of or demand for rent or affirmation of this Lease made during such period as may in all the circumstances be reasonable for enabling the Landlord to conduct negotiations with the Tenant for remedying the breach

### 6.3 **SERVICE OF NOTICES**

Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 applies to all notices which may require to be served under the terms of this Lease except that section 196 is deemed to be amended as follows:-

6.3.1 the final words of section 196(4) "and that service ..... be delivered" are deleted and there is substituted "and that service is deemed to have been made on the third working day after the registered letter has been posted" and "working day" means any day from Monday to Friday (inclusive) other than Christmas Day Good Friday and any statutory or bank holiday

6.3.2 any notice or document is also sufficiently served if sent by telephonic facsimile transmission to the party to be served and that service is deemed to be made on the day



7. **LANDLORD'S POWERS**

7.1 The Landlord enters into this Lease pursuant to its powers under sections 111 120 122 and 123 of the Local Government Act 1972 the Education Act 1996 Section 2 of the Local Government Act 2000 and all other powers so enabling and warrants that it has full power to enter into this Lease and to perform all obligations on its part herein contained

7.2 Nothing in this Lease shall fetter the Landlord in the proper performance of its statutory functions

8. **NEW TENANCY**

This Lease is a new tenancy for the purposes of the 1995 Act

9. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

A person who is not a party to this Lease has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Lease but this does not affect any right or remedy of a third party which exists or is available apart from that Act

10. **CHARITY**

The Property will as a result of this Lease be held by the Tenant as an exempt charity

**EXECUTED AS A DEED** by the parties on the date which first appears in this Lease.

EXECUTED (but not delivered until the date Hereof) AS A DEED by affixing the Common Seal of **THE COUNCIL OF THE CITY OF COVENTRY** in the presence of:-

Authorised Signatory

EXECUTED (but not delivered until the date hereof AS A DEED by affixing the Common Seal of [ ] in the presence of:-

Director

Secretary

**SCHEDULE 1**

**The Property**

**ALL THAT** land and buildings situate at 411 Green Lane in the City of Coventry shown edged red on the Plan and include the following so far as the same may exist at any time during the Term:-

- (a) all Conduits exclusively serving such Property and
- (b) all Fixtures and Fittings (save for those that belong to the Tenant)

## **SCHEDULE 2**

### **Rights Granted**

#### **1. SERVICES**

The right in common with the Landlord and all others from time to time so entitled and with the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed save as provided below) for the Tenant to connect into (in so far as there are no connections) and to pass Amenities to and from the Property through Conduits now or at any time during the Term laid in under or upon any adjoining land of the Landlord PROVIDED that the Landlord has the right at any time or times during the Term:-

2.1 to refuse consent for the Tenant to connect into any Conduits if in the reasonable opinion of the Landlord the Conduits are insufficient to bear the extra load which would be likely to result from the proposed connection by the Tenant and

2.2 to divert or vary the positions of the Conduits upon giving reasonable prior notice to the Tenant (except in case of emergency) (which interruption the Landlord must however seek to minimise so far as is reasonably possible)

#### **3.. SUPPORT**

A right of support and protection to the Property from the Landlord's adjoining land

### SCHEDULE 3

#### Rights Excepted and Reserved

1. The full and free right for the Landlord and their successors in title to build upon alter add to extend redevelop or otherwise use any part of the adjoining land or property now or formerly or hereafter belonging to the Landlord to the fullest extent as if this Lease had not been granted notwithstanding that such buildings or user may affect the access of light or air coming to the Property
- 2.1 The free flow of water soil gas electricity and other supplies from any adjoining land belonging to the Landlord through the sewers drains pipes and channels now or in future existing in or under the Property and the right to make connections with such sewers drains pipes and channels or any of them for the purpose of exercising such right
- 2.2 The right during the Term to create any easement or install or maintain any sewers pipes drains wires or channels in over or under the Property for the benefit of any adjoining or neighbouring land belonging to the Landlord
- 3 The right for the Landlord and their licensees and tenants for the time being of adjoining Property belonging to the Landlord if so authorised in writing by the Landlord and their servants agents and workmen at all reasonable times after reasonable notice (of not less than 5 days notice in writing save in the case of emergency where no notice is required) to enter the Property for the purpose of executing any work on or in connection with such adjoining property which otherwise cannot be conveniently executed the person or persons exercising such right causing as little interference or damage to the Property as is reasonably practicable and making good all damage caused thereby
4. The right at any time throughout the Term (upon giving to the Tenant no less than five (5) days prior notice in writing save in the case of an emergency where no notice is required) to enter the Property to:-
  - 5.1 inspect cleanse connect lay repair remove relay replace with other alter or execute any works whatever in connection with the pipe sewer drains and channels referred to in Clause 2 of this Schedule
  - 5.2 carry out any work or do anything whatsoever compromised within the Landlord's obligations in this Lease or under any legislation whether or not the Tenant is obliged or liable to make a contribution
  - 5.3 exercise any of the rights granted to the Landlord by this Lease
  - 5.4 view the state and condition and repair of the premises
  - 5.5 take schedules or inventories of fixtures and fittings and other items to be yielded up on the expiration of the Term
6. The right of support and protection by the Property for such other parts of the adjoining land and property of the Landlord as requires such support and protection  

Subject to the Landlord in the exercise of the aforesaid rights causing as little damage and inconvenience to the Property as reasonably possible and making good to the reasonable satisfaction of the Tenant all damage caused to the Property
7. From time to time during the Term the right (upon giving to the Lessee no less than two (2) months notice in writing) the right for the Council and its employees and visitors to use the whole or part of the Property as a polling station on dates and times as are necessary for the purposes of facilitating public voting during local general or European elections



8. From time to time during the Term the right for the Landlord to use the Property as an "Emergency Centre" in the event that there is a major incident in the City of Coventry that requires the use of buildings in cases of emergency provided that in such an event the Lessee will co-operate with the Council and use every effort to assist the Council's use of the premises notwithstanding any hiring arrangements that are in place for use of the Property at that time

#### **SCHEDULE 4**

##### **Landlord's Option to Determine**

In the event that the Tenant ceases at any time during the Term to use the Property for the purposes set out in clause 3.9.3 then the Landlord may determine this Lease by giving to the Tenant not less than five (5) month's prior notice in writing of its desire ("the Landlord's Notice") And upon the expiration of the Landlord's Notice this Lease shall cease and determine absolutely but without prejudice to any right of either party hereto against the other in respect of any antecedent breach of any of the covenants and conditions herein contained PROVIDED ALWAYS THAT neither the Property nor any part or parts thereof being on the Termination Date subject to any underlease or charge and the Tenant shall give to the Landlord upon the expiration of the Landlord's Notice full vacant possession of the whole of the Property

**Draft Lease Plan for Finham Primary School**



PLAGE DIRECTORATE  
CORPORATE PROPERTY SERVICES  
9TH FLOOR, CIVIC CENTRE 4  
MUCH PARK STREET  
COVENTRY CV1 2PY  
02476 631532

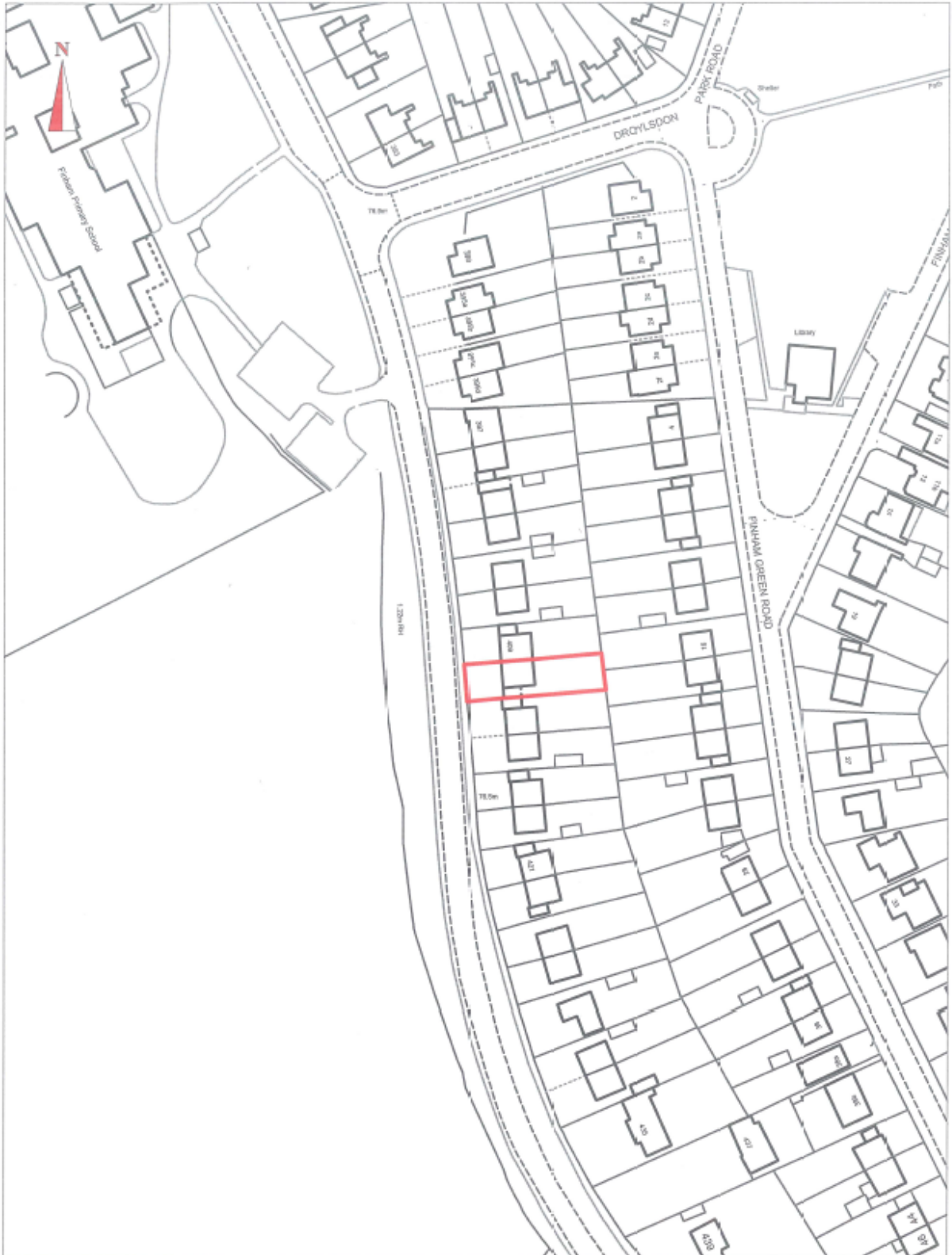


**Finham Primary Leasehold Plan**

Scale 1:1250      Drawn by RG      Date 27/01/2016  
O.S. Ref. No: SP3275SE      LPR-

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**Draft Lease Plan for the Site Services Accommodation at 411 Green Lane**



<p>PLACE DIRECTORATE CORPORATE PROPERTY SERVICES 9TH FLOOR, CIVIC CENTRE 4 MUCH PARK STREET COVENTRY CV1 2PY 02476 831532</p>	 <p>Coventry City Council</p>	<p><b>Finham Primary SSO House Leasehold Plan</b></p>
		<p>Scale 1:1250 O.S. Ref. No: SP3275SE</p> <p>Drawn by RG LPR-</p> <p>Date 27/01/2016</p>

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Draft Asset Transfer Agreement

DATED \_\_\_\_\_ 2015

THE COUNCIL OF THE CITY OF COVENTRY (1)

and

THE GOVERNING BODY OF FINHAM PRIMARY SCHOOL (2)

and

FINHAM PARK MULTI-ACADEMY TRUST (3)

---

TRANSFER AGREEMENT

---

brownejacobson

THIS AGREEMENT is made

2015

**BETWEEN:**

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of Council House, Earl Street, Coventry CV1 5RR (the "**Council**");
- (2) **THE GOVERNING BODY OF FINHAM PRIMARY SCHOOL** of Green Lane, Coventry, West Midlands, CV3 6EJ (the "**Governing Body**");
- (3) **FINHAM PARK MULTI-ACADEMY TRUST** a company limited by guarantee registered in England and Wales (company number 07700317) whose registered office is at Finham Park School, Green Lane, Coventry, West Midlands CV3 6EA (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

**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 Finham Primary 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 **Error! Reference source not found.**, but excluding the Excluded

Assets;

**“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 1 (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 in each case excluding the Excluded Contracts;

**"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;
<b>“Excluded Contracts”</b>	means the contracts described in Schedule 5 which are excluded from the transfer effected by this Agreement;
<b>“Funding Agreement”</b>	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;
<b>“Loss”</b>	means all costs, claims, liabilities and expenses (including reasonable legal expenses) and “Losses” shall be construed accordingly;
<b>“the LGPS”</b>	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;
<b>“the Personnel Files”</b>	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;
<b>“the Pupil Records”</b>	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;
<b>“the Regulations”</b>	means The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended



	or re-enacted from time to time);
<b>“the School”</b>	means Finham Primary School (a maintained school);
<b>“School Fund”</b>	means the account held at Yorkshire Bank, 7-11 High Street, Coventry, CV1 5SB, titled Finham Primary School Fund Account, with Charity No. 1056489 and the following Account Number and Sort Code:  Account Number: 49815118  Sort Code: 05-03-87
<b>“School Employees”</b>	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;
<b>“Staffing Information”</b>	means, in respect of the School Employees, the information listed in Schedule 1;
<b>“Third Party Consent”</b>	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;
<b>“the TPS”</b>	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;
<b>“Transfer Date”</b>	means the date specified in the Funding Agreement on which the Academy will open;
<b>“Transferring Employees”</b>	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 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 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 the Transfer 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
- 4.4 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 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 the event that the Council has procured professional services in connection with building or maintenance works by utilising in-house

resources instead of appointing external consultants, in respect of those services the Council warrants that it has exercised (and if relevant will continue to do so) the degree of reasonable skill and care to be expected of an appropriately qualified professional of the relevant discipline to the services in question who is experienced in performing such services.

9.15 In any case where the Contracts 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:

9.15.1 the Council shall continue to perform the employer's obligations under such Contracts;

9.15.2 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;

9.15.3 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

9.15.4 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.

## 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  
FINHAM PRIMARY SCHOOL**

\_\_\_\_\_

\_\_\_\_\_

in the presence of:

Signature of witness:

Witness' name:

Witness' address:

**EXECUTED AS A DEED by  
FINHAM PARK MULTI-ACADEMY  
TRUST**

acting by

.....,

a director, in the presence of:

\_\_\_\_\_

Director

Signature of witness:

Witness' name:

Witness' address:

## 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 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 3**  
**THE EXCLUDED ASSETS**

The following assets are excluded from this transfer:

6. The freehold or leasehold titles to the site of the School which are dealt with by separate agreement.
7. 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.

**Schedule 4**  
**THE EXCLUDED CONTRACTS**