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Cabinet  
Council

8<sup>th</sup> January 2013  
15<sup>th</sup> January 2013

**Name of Cabinet Member:**

Cabinet Member (Education) - Councillor Kershaw

**Director Approving Submission of the report:**

Director (Children, Learning & Young People)

**Ward(s) affected:** All

**Title:**

Caludon Castle School – Proposed Academy Conversion

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**Is this a key decision?**

No

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**Executive Summary:**

Caludon Castle School is proposing to convert to an academy. The Secretary of State for Education issued an Academy Order under Section 4 of the 2010 Academies Act in March 2011 which enables the school to convert to an academy on an agreed conversion date. Caludon Castle is a Private Finance Initiative (PFI) scheme and therefore in addition to the standard legal documentation which has to be completed for a conversion (Lease and Asset Transfer Agreements), the City Council are also required to agree a School Agreement and Principal Agreement. This report therefore sets out the position agreed with the school in relation to the treatment of risks/liabilities under the PFI Project Agreement post conversion and seeks Cabinet approval to the legal agreements necessary for the conversion to take place.

**Recommendations:**

Cabinet is requested to recommend that the City Council:

1. Enters into the following legal agreements in respect of the proposed academy conversion of Caludon Castle School as set out in appendices 3 to 8 of this report:
  - 125-year lease agreement at a peppercorn rental;
  - asset transfer agreement;
  - School Agreement;
  - Principal Agreement;
  - the Deed of Amendment for the PFI Project Agreement
2. Authorise the authorised signatory within Finance and Legal Services to issue the certificate under the Local Government (Contracts) Act 1997 to confirm the Council's

power to enter into the Deed of Amendment to the PFI Project Agreement and grant an indemnity from the Council to the authorised signatory against any claim arising from signature of the certificate; and

3. Delegate authority to the Cabinet Member (Strategic Finance and Resources), Cabinet Member (Education), Director of Children, Learning & Young People and Director of Finance & Legal to agree any minor amendments to the documents in 1) above arising from further consideration by Coventry Education Partnership, Sumitomo Mitsui Banking Corporation, Department for Education and Caludon Castle School.

Council are requested to approve the above recommendations.

**List of Appendices included:**

Appendix 1: Risk Allocation Matrix

Appendix 2: Proposed Land transfer map showing the extent of the demise under the 125 year leased edged red

Appendix 3 Draft Lease Agreement

Appendix 4: Draft Asset Transfer Agreement

Appendix 5: Draft School Agreement

Appendix 6: Draft Principal Agreement

Appendix 7: Draft Deed of Amendment for the PFI Project and;

Appendix 8: Draft Certificate under the Local Government (Contracts) Act 1997.

**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?**

Yes – 15<sup>th</sup> January 2013

## Report title: Caludon Castle School – Proposed Academy Conversion

### 1. Context (or background)

- 1.1 In 2001 and in response to governor and community concerns about the poor condition of Caludon Castle, the City Council agreed to bid for PFI (Private Finance Initiative) credits to rebuild the school as this was the only funding route available to the City Council at that time. Financially this was only possible because all Coventry schools agreed to fund the final affordability gap (c £320,000 per annum) as a topslice to all school funding in the City. The school also makes an annual contribution towards the costs of the project.
- 1.2 In December 2004 the Council entered a PFI contract to design, build and operate a new Caludon Castle Secondary School. The contract was awarded to Coventry Education Partnership (CEP). The new school opened in September 2006 and provides places for 1500 students aged 11-18+ and also houses the Wyken Community Library. Day to day facilities management is provided by Integral UK Ltd and outside of school hours, extended services are managed by Active Leisure Management (ALM). Facilities available to the local community as part of the extended services include a swimming pool, fitness suite, floodlit all weather pitch, 6 floodlit tennis courts, sports hall, dance studio and a large theatre style main hall. The PFI contractor has generally been performing well with few performance/unavailability deductions being made.
- 1.3 The PFI Contract and the Governing Body Agreement (by which the school agrees to financially contribute towards the annual payments) were written assuming that the school continue to be part of the local authority. In 2004 the possibility of Caludon's transition to an independent academy could not be predicted – academies were for “poor performers.” However, now faced with Government policy aimed at encouraging conversion to Academy status and the school's desire to convert, the Council has had to understand the implications of this proposed change, not least in terms of the significant financial obligations that exist within the PFI contract and the extent to which the Council is exposed financially if the school converts and the Council loses control over the school and its funding.
- 1.4 The stated policy of the coalition government is over time to enable any maintained school who wishes to do so to apply to become an Academy. Schools choosing this option would no longer be schools maintained by the Local Authority. The decision maker in establishing an Academy is the Department for Education (DFE). The Local Authority has no decision making role in the process. The Academies Act 2010 introduced a fast track approach for schools wishing to convert to academy status.
- 1.5 In the summer term 2010, Caludon Castle School was invited to convert to academy status by the Secretary of State for Education, because they were rated by OFSTED as an 'outstanding' school. Between June and December 2010 the benefits of academy status were discussed at full Governors meetings. At their meeting on 2<sup>nd</sup> February 2011, the Governing Body formally resolved to apply for academy status. A further consultation meeting was held with parents on 2<sup>nd</sup> March 2011. The Secretary of State issued an Academy Order under Section 4 of the 2010 Academies Act on 30<sup>th</sup> March 2011, which will effectively enable the school to convert to an academy on an agreed conversion date. This was not an issue that the Council had any control over.

- 1.6 At its meeting on 29<sup>th</sup> November 2011, the City Council adopted a formal policy on local authority maintained schools converting to academy status. This policy set out the Council's approach to academy conversions including the Council's opposition to forced academy conversions. The proposed conversion by Caludon Castle School has been led and approved by the School's Governing Body and is therefore not a forced conversion.
- 1.7 In July 2011, officers issued a formal Variation Notice to CEP, as required under the PFI contract, to facilitate changes to the Project Agreement to reflect the proposed conversion of Caludon Castle School to Academy status under the 2010 Academies Act. In particular, the variation is intended to reflect the Academy's role in the administration and operation of Caludon Castle School and will be implemented so as to maintain the current risk profile in the project for CEP and its lenders, on a "no better, no worse" basis.
- 1.8 The Local Authority is expected to cooperate with schools seeking to convert. In addition to the formal agreements, the authority will effectively at its own expense have to agree closure of accounts and financial transfers, and provision of HR support and information (including staff transfer, TUPE and pension data).
- 1.9 At the Scrutiny Coordination Committee Meeting held on 27<sup>th</sup> April 2011, the Cabinet Member (Education) proposed that necessary leases, loan agreements and other agreements for each academy application be the subject of formal consideration by the relevant Cabinet Member or Cabinet.
- 1.10 The Cabinet Member (Education) also decided to request that schools seeking conversion should undertake specific consultation with their local communities in relation to the lease and specifically whether any claims had been made in relation to access or rights of way from the general public. Officers were asked to liaise with ward councillors on the same matter.
- 1.11 The recently completed Wyken Extended Learning Centre built on the Caludon Castle School site does not constitute part of the existing PFI contractual arrangements or conversion proposal and therefore would remain unaffected. The area to the south of the River Sowe, which formerly constituted part of the school playing fields also remains under the control of the City Council and is unaffected.

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

- 2.1 Caludon Castle School have been invited to convert to academy status by the Secretary of State for Education, because they are rated by OFSTED as an 'outstanding' school. At their meeting on 2<sup>nd</sup> February 2011, the Governing Body formally resolved to apply for academy status.
- 2.2 Under Schedule 1 of The Academies Act 2010 therefore, the Authority is required to grant to the Academy a 125 year lease at a peppercorn rental for land wholly or mainly used by the school in the preceding 8 years. Failure to agree a lease for the playing fields may result in the Secretary of State using a discretionary power under Schedule 1 of the 2010 Act to step in and make a transfer scheme.
- 2.3 The Authority is expected by DFE to agree an Asset Transfer Agreement with the academy. 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.

- 2.4 Given that Caludon Castle School is funded under the Private Finance Initiative, the Authority will also need to enter into a School Agreement (which is in effect the new Governing Body Agreement covering the Academy contribution to the Unitary charge payment that the Authority pays to CEP). In the event that the Authority does not enter into a School Agreement with the academy the worst case scenario for the Local Authority is that the DfE allow the conversion to take place, the current Governing Body Agreement ceases and we lose the school contribution which would leave the Council with a significant affordability gap on the scheme. There is no national precedent for this and the official DfE line is that they would prefer the City Council and school to resolve issues locally. It is unclear as to when/if the DfE were likely to 'step in' and force a resolution.
- 2.5 Officers have therefore been negotiating with the school over the treatment of risk post conversion and the final agreed position is set out in paragraph 5 and appendix 1 of this report. It is on the basis of this negotiated position that Cabinet is being requested to recommend to the City Council that the necessary legal documents for academy conversion now be entered into.

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

- 3.1 The DfE approach is that the Council and the school need to agree the way that PFI costs and risks are handled post conversion. The Council has been engaged in these discussions for the last 18 months and has previously reported back to the Cabinet Member (Education) on the progress of discussions. Crucially, officers have been negotiating to transfer as much risk as possible to the school or DfE.
- 3.2 There is no requirement by DfE on local authorities or converting schools to consult specifically on the proposed lease of land/buildings. However, following the Scrutiny Coordination Committee meeting on 27<sup>th</sup> April 2011, the Cabinet Member (Education) requested schools seeking academy status 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 Property which are still subsisting and capable of taking effect.
- 3.3 Caludon Castle School has undertaken two public consultation exercises, one general consultation on academy conversion (undertaken in March 2011 which included a parents meeting) and more recently the school undertook specific consultation on the proposed lease and associated land via a published Public Notice in the Coventry Telegraph. This consultation period ended on 24<sup>th</sup> June 2011. The local Ward Councillors were also advised of the consultation exercise. No comments were received from the public.
- 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 Subject to Cabinet and City Council approval, officers will seek to finalise and sign the required Agreements in liaison with each of the solicitors representing the school, DfE, CEP and their funders to enable the school to convert. The proposed

conversion date is 1<sup>st</sup> February 2013 but this is subject to the finalisation of all the necessary conversion agreements.

## **5. Comments from Director of Finance and Legal Services**

### **5.1 Financial implications**

#### General

- 5.1.1 Academies receive their funding directly from the Education Funding Agency (EFA) which includes a share of the central funding currently received by Local Authorities for maintained schools.
- 5.1.2 The Academy inherits the closing financial balance of the predecessor maintained school at the date the school ceases to be maintained by the local authority. This applies whether the balance is a surplus or a deficit. The Local Authority will need to be involved in calculating this, and paying to the Academy (where in surplus) within 4 months. If an Academy has a deficit at the point of conversion the Local Authority will be required to notify the Secretary of State. Once the amount is validated and agreed, the LA will be paid a sum equivalent to this by the Secretary of State. 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 should state that the Local Authority and the Company agree to repay any such sums to the other (as appropriate).
- 5.1.3 In regard to specific financial implications on the land/buildings lease the Authority will only retain reversionary freehold risk. The Academies will acquire leaseholder and occupier risk. We have had 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.

#### PFI Contract

- 5.1.4 There are also some significant issues regarding the operation of the PFI contract post conversion. Despite DfE's simple assumption that post transfer the position should be no better and no worse for the school and the Council, there are actually a series of complex issues about who pays for what and who bears future risk as set out in the Project Agreement between the Council and the PFI provider. Currently the City Council manages these risks, but going forward, we would wish the school to take responsibility for as many risks as possible.
- 5.1.5 These risks are identified in Appendix 1 and have been subject to wide debate with the school (and their solicitors), CEP and DfE since early 2011. Officers have now reached a negotiated position where the allocation of risks post conversion have been formally agreed with the school and incorporated within the draft School Agreement as set out in Appendix 1 of this report. These include variations, utilities and insurance. Officers do not believe that the risks associated with the library contribution (£53k per annum) and Termination of the contract (if it was the Council's fault) are transferrable over to the school so these will be retained by the Council.

One of the most significant financial risks is indexation. The school do not believe they can afford the contract if the Council does not take on this risk. Indexation of the unitary charge in the original PFI financial model was based on annual increases of

2.5%. Since the start of the Caludon Castle PFI contract inflationary increases have averaged 3.5%. Inflation for 2011/12 was 5.1% and 4.0% for 2012/13, which significantly affects the cost of the contract now and going forward. As a result, the Council funded a £155k in year gap from DSG reserve in 2011/12 and this gap is expected to rise to £197k for 2012/13. This gap is an annual gap ongoing for the remaining years of the contract and will index annually. It is currently unfunded. The Council will seek to fund any ongoing affordability gap from DSG and will still retain the overall responsibility for ensuring the project is affordable over its life even after the school converts.

- 5.1.6 Although your officers have therefore agreed that Indexation Risk will sit with the City Council post conversion, there is a commitment through the Draft School Agreement for both parties to review and make recommendations regarding any issues arising from budgetary pressures (Schedule 1 – School Liaison Procedure AND Schedule 2 Calculation of the Company's Contribution). It should be noted however that the commitment through the School Agreement will not be legally binding on any party, so the Council's exposure to affordability gap pressures can only be limited to a certain extent through the agreements and given the levels of uncertainty on wider school funding reforms.
- 5.1.7 The affordability position of the project is affected by the amounts contributed from the DSG topslice and the school, which contribute towards the unitary charge costs. The DfE is considering proposals to reform the method of allocating funding to schools which may affect the DSG topslice levels and how they index over time. Currently the affordability gap (refer to paragraph 1.1) is allocated to the school as part of their budget share. It is not clear how the Education Funding Agency will allocate this budget to the school and index it over time. This will need to be resolved as part of the process of discussions with the school and DfE post conversion, as it is unlikely to have been resolved pre conversion. Our expectation is that this budget will be passed in full to the school for them to return to the City Council as part of their school contribution.
- 5.1.8 As part of the discussion around managing the affordability position, your officers have reached agreement with the school, on how their contribution will be calculated for 2012/13, the financial year during which academy conversion is proposed. Beyond 2012/13 the budgetary position of the school is unclear and therefore officers will discuss with the school once the position is known and this may be post conversion. In the meantime officers have sought to agree a definition of Adjusted Schools Budget (ASB) with the school. We have sought to ensure any definition does not leave room for wide interpretation post conversion. The definition is critical because it will impact upon the level of contribution made by the school for the duration of the contract period post conversion. It therefore will potentially have a significant effect on affordability and any resultant 'gap' that the Council may have to fund.
- 5.1.9 DfE have requested the City Council to retain the original drafting of the definition of ASB. Officers have now therefore agreed to define the ASB as the sum of money which the City Council would otherwise have allocated annually to Caludon Castle, were the school not to have closed and the Academy not to have opened (refer to Appendix 5), on the basis that there is a worked example in Schedule 2 of the School Agreement showing the budget items that will be deducted from the ASB (e.g. rates). Schedule 2 also now clarifies the methodology used to calculate the school's contribution post conversion, including the calculation of the relevant proportion which is currently 9.5% of the ASB (less specific items as detailed in Schedule 2 of

the draft School Agreement). Officers have made it clear that this will be reviewed once the academy funding position post conversion is known.

- 5.1.10 The extended services delivered by ALM under the Project Agreement are benchmarked every three years. Under the Project Agreement, ALM are required to pay a subsidy of £35k to CEP (the Minimum Net Income), which helps with the overall affordability of the scheme. Given the problems in attracting and retaining a leisure operator on site during the first five years after full service commencement, CEP have effectively been meeting the cost of this subsidy. They have now indicated that they can no longer meet this going forward. Likewise the school has also indicated that it will not meet the cost of this subsidy. ALM have indicated that they would be prepared to pay a subsidy of £18k plus 50% of any profits over £10k per annum. Discussions are therefore currently taking place with CEP and ALM to progress this issue.
- 5.1.11 The Library Service make an annual contribution of £53k towards the unitary charge to reflect the running costs associated with the Wyken Community Library. This contribution will be payable for the duration of the contract even in the event that the library facility is no longer required.
- 5.1.12 Officers have, throughout this process, attempted to protect the Council from financial risk associated with the conversion. However, the Council will continue to be responsible for managing the overall affordability implications of the PFI contract post conversion. A number of factors that influence this affordability position are outside of the Council's control and therefore there is no guarantee that the project may not require additional funding in the future. If this arises, discussions will be held with the school, the DfE and the Schools Forum to try to achieve a cost neutral position for the Council.

## 5.2 Legal implications

- 5.2.1 The current PFI contract between the City Council and CEP is set out in a Project Agreement. There is also a Governing Body Agreement between the City Council and the School through which the school is legally committed to pay a contribution towards the Unitary Charge payable to CEP.
- 5.2.2 Unlike standard maintained schools, PFI academy converters are required to sign additional legal agreements. The conversion will involve the signing of a suite of legal documents which are the responsibility of the City Council, school and/or the DfE. These include:
- The Funding Agreement between the Secretary of State and the Academy
  - The Lease between the Authority and the Academy (Appendix 3)
  - The Commercial Transfer Agreement (Appendix 4)
  - The School Agreement (Appendix 5)
  - The Principal Agreement (Appendix 7)
  - The Corporate and Constitutional Documents of the Academy
  - The Deed of Amendment to the Project Agreement
  - Certificate under the Local Government (Contracts) Act 1997
- 5.2.3 The Principal Agreement is a document to be entered into between the DfE, the City Council and the school and is designed to offer protection to the City Council in the event that the new Academy Company defaults on its obligations in the School Agreement. This document will be prepared by the DfE once the draft School

Agreement has been agreed in principle by the City Council and the School. One issue that has been the subject of extensive discussion between the DfE and the City Council is the form of indemnity that will be given by the DfE to the City Council. Under the current PFI Project Agreement, the Authority and CEP indemnify each other for losses arising out of their breach of the project agreement. The indemnity given by the Authority covers the acts of an 'Authority Related Party' which will include the new Academy. The issue under discussion is the form of indemnity to be given by the DfE to the Authority if an act of the Academy causes the Authority to be in breach of the project agreement and the extent to which the DfE will compensate the Authority if it has to pay compensation to CEP.

The DfE would not agree to provide an indemnity to the City Council and the school would not agree that the indemnity in the School Agreement would be removed, modified or that they would give an indemnity to the City Council. Their position is supported by DfE. On that basis the indemnity in the template School Agreement has been reinstated. The risk of an act occurring which would trigger the indemnity is low but it is likely to be high impact in terms of monetary compensation payable by the City Council. Officers will seek to mitigate this risk through the existing contract monitoring arrangements established under the PFI Project Agreement, which has now been in place since 2006. In that period there have been no calls upon the indemnity.

- 5.2.4 The School Agreement is to be entered into between the Authority and the Academy and replaces the current Governing Body Agreement between the Authority and the school. It sets out the mechanism by which the Academy will meet its financial obligations to the Authority and covers the risk issues identified in the Risk Matrix (Appendix 1). The risks have been agreed with the school and although it appeared that the school was changing its position on insurance, the school has now withdrawn its proposed amendment.
- 5.2.5 The Academy 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 they have 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 to step in and make a transfer scheme.
- 5.2.6 Schedule 1 of the Academies Act 2010 requires the Academy and the Council execute legal documentation in the form of a 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 to the Lease currently forming the site of the school's existing land. Guidance on land transfer from the Department of Education 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. The form of lease has been based upon the "model long term lease" produced by the Department for Education.
- 5.2.7 The Asset Transfer Agreement will deal with assets, contracts and certain liabilities to be transferred to the Academy. The form of agreement is based upon the model form document produced by the Department for Education.
- 5.2.8 In the event that the Authority and the school cannot agree the terms of the School Agreement, the worst case scenario is that the DfE allow the conversion to take place. In that event the current Governing Body Agreement ceases and we lose the school contribution which would leave the Council with a significant affordability gap on the scheme. There is no national precedent for this and the official DfE line is that

they would prefer the City Council and school to resolve issues locally. It is unclear as to when/if the DfE were likely to 'step in' and force a resolution.

- 5.2.9 A further area of concern had been in relation to a potential vires issue relating to the payment of the Unitary Charge by the Council post conversion, when in effect we would cease to maintain the school. Lawyers acting on behalf of the Sumitomo Mitsui Banking Corporation (SMBC) who are the sole funders for the scheme, have advised CEP that the potential vires issue has been resolved through last years amendment to the 2010 Academies Act. There will, therefore, be no question of any future PFI payments made by the City Council under the current contract, being ultra vires. The funder is therefore now content that the current contractual relationship between the school, Council, CEP and SMBC would be unaffected if the school was to convert to an academy at a future date.

## **6. Other implications**

*Any other specific implications*

### **6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

- 6.1.1 The creation of Academies, if they are not part of a positive partnership of schools, has the potential to significantly reduce the City 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. However, to date, in relation to the academy conversion process for Caludon Castle School, good relationships have been maintained and the school has expressed a commitment to continue to work with the City Council and other schools.
- 6.1.2 A revised Education and Learning Strategy is currently being developed. It will come forward for discussion and approval by Council during the Autumn 2012. The aim of the Strategy is to continue to improve the quality of education provision and outcomes for Coventry children and young people. It will be delivered in a way that maintains the strong relationship and commitment to partnership and collaboration between schools and with the Local Authority within the Coventry 'family of schools'. Schools and Academies are at different stages in identifying what expertise they can offer and how they can work with other schools across the City. Some new ways of working are already in place, for example Fredrick Bird Teaching School and Swan Alliance, hard federated arrangement between Walsgrave and Clifford Bridge primary schools, school networks such as 'fresh eyes' and 'Network 9' and National and Local Leaders of Education. Caludon Castle School's agreed commitment will be managed within the context of the Education Improvement Strategy involving all schools across the City.
- 6.1.3 Caludon Castle is an outstanding school (Ofsted November 2011) and recognised nationally as a National Lead School with the Headteacher a National Leader of Education. The school has a strong history of partnership working with the Local Authority and secondary and primary schools across the City. The School senior leaders and Governors are committed to making a significant contribution to the Coventry family of schools, both now as a Local Authority School and in the future as an Academy and Teaching School. Some of this will be funded by the Academy and provided at no cost to the Local Authority, some will be at a cost to the Local Authority.

- 6.1.4 The school's vision is to strengthen and develop its work and relationship with other schools in the City, both informally and formally, for example through targeted support arrangements, shared appointments, federated arrangements and as a future Academy Sponsor should this be necessary.
- 6.1.5 Caludon Castle is a strategic partner in Coventry's Teaching School Alliance and is leading one of three Leadership Hubs in the City. The Headteacher makes a significant contribution to the City's Over-coming Barriers to Learning Strategy and the priority to improve our Primary Schools. The school is building capacity and infrastructure now to be ready to take on a role across a number of schools in the future.
- 6.1.6 The School has an excellent track record of providing effective support to other schools within and outside Coventry. The quality of the work has been very highly regarded and made a significant contribution to improvement. For example, Caludon Castle been a lead school in the secondary school leadership and management development programme for a number of years and more recently is providing leadership and teacher support to Henley Green Primary School and a drama/English teacher to work with Year 6 children at Clifford Bridge primary school, currently in Special Measures. The school has also released 2 teachers for this academic year to teach music and drama at Wyken Extended Learning Centre.
- 6.1.7 The School's future role in supporting educational improvement across the city is now set out in a Memorandum of Understanding which is included at Schedule 7 of the draft School Agreement. It is estimated that the City Council could benefit from the Academy and its expected Teaching School Status to the value of approximately £105,000 per annum.

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

The approach to managing the financial risks associated with the PFI Project Agreement are detailed in paragraph 5. The City Council will retain overall responsibility for managing the PFI Project Agreement and will therefore manage risk through the mechanisms set out in the School Agreement and the Principal Agreement. The City Council will retain overall responsibility for managing affordability risk under the contract.

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

Academies are independent bodies from the City Council. As such they will have freedom to decide where they obtain some services and support from. Hard and soft facilities management (FM) services will continue to be provided by CEP as part of the PFI Project Agreement. Should the academy decide to procure other non FM related services elsewhere than the City Council (e.g. HR) 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 City 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.

As Academies are the employers of the school's staff, Caludon Castle will be required to follow TUPE legislation. Under the Local Government and Teachers Pension Scheme Regulations the Academy will be a scheme employer for teacher and support staff and will post conversion be responsible for paying pension contributions for eligible employees. These obligations are contained in the Asset Transfer Agreement. In this case the transfer of staff will be between Coventry City Council and the Caludon Castle academy company. Staff and trade unions have been and will continue to be consulted on the transfer.

#### **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 the academy will in itself not have any adverse affect on the community access or enjoyment of the site compared to that currently available from the school as a community 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), 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 City Council to the Academy with the school's conversion to academy status and it will be for the 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 City 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 City Council to enable us to procure Carbon Credits on their behalf.

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

None that have not already been addressed

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Neelesh Sutaria	CLYP HR Manager	Customer & Workforce Services	11/10/2012	12/10/12
Lara Knight	Governance Services Officer	Governance Services	11/10/2012	12/10/12
Cllr David Kershaw	Cabinet Member (Education)		11/10/2012	11/12/12

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**Appendices**

Appendix 1: Risk Allocation Matrix

Appendix 2: Proposed Land transfer map showing the extent of the demise under the 125 year leased edged red

Appendix 3 Draft Lease Agreement

Appendix 4: Draft Asset Transfer Agreement

Appendix 5: Draft School Agreement

Appendix 6: Draft Principal Agreement

Appendix 7: Draft Deed of Amendment for the PFI Project Agreement and;

Appendix 8: Draft Certificate under the Local Government (Contracts) Act 1997.

**Agreed Allocation of Risk post Academy Conversion**

Ref	Risk / Responsibility	Caludon Castle	Coventry City Council	DfE	Notes	DRAFT SCHOOL AGREEMENT REFERENCE
a	Free school meals	✓			The School has agreed to bear the financial risk on free school meals being higher than the 60 meals per day built into the unitary charge model at financial close.	<b>Clause 12A</b> <i>Catering and NNDR (National Non Domestic Rates)</i>
b	Utilities tariff and consumption risk	✓			The School has agreed to bear these risks. The School will now benefit from any beneficial movement in either energy tariff or consumption. Previously any benefit was to be paid into a Unitary Charge Contribution Account (UCCA) managed by the City Council for the benefit of the scheme.	<b>Clause 15.5</b> <i>Utilities</i>
c	Benchmarking and market testing	✓			The School has agreed to bear any costs associated with benchmarking/market testing for soft services provided by the FM provider (who is a sub contractor of the PFI Provider). By the same token, the school will take the benefit of any reduction in costs as a result of benchmarking/market testing to support the overall affordability position for the scheme. The costs associated with benchmarking/ market testing of the Extended User Services operated at the school is still being negotiated but the school has indicated it is not willing to bear the risks of these costs.	<b>Clause 18</b> <i>Benchmarking and Market Testing</i>
d	Variations	✓			The School will bear costs resulting from variations it requests, this includes capital cost and any uplift in the unitary charge as a result. The Council would not expect to initiate any variations post-conversion.	<b>Clause 26.2</b> <i>Changes Proposed by the Company</i>

Ref	Risk / Responsibility	Caludon Castle	Coventry City Council	DfE	Notes	DRAFT SCHOOL AGREEMENT REFERENCE
e	Insurance	✓			The School will bear the cost of any adverse impact of insurance benchmarking. The school will now benefit from any beneficial movement in insurance cost. Previously any benefit was to be paid into a Unitary Charge Contribution Account (UCCA) managed by the City Council for the benefit of the scheme.	<b>Clause 16.5</b> <i>Sharing of Insurance Cost Differentials</i>
f	Change in law	✓		✓	The School will bear this risk for change in law, but for some types of change in law, the DfE would be expected to contribute towards costs resulting from such changes (as was the case with the catering change in law).	<b>Clause 26A</b> <i>Change in Law</i>
g	Library contribution		✓		Should the library service withdraw from Caludon Castle, the Council will continue to contribute £53k per annum.	
h	Deductions	✓			All benefits from deductions will go to the school via a benefit to the overall scheme through the affordability model.	<b>Schedule 2</b> <i>Calculation of Adjusted Schools Budget</i>
i	Termination and authority indemnity		✓		The Council will retain risks associated with this, as per the Project Agreement, save where any fault lies with the DfE. The probability of this risk materialising (i.e. authority actions leading to a termination) is remote.	<b>Clause 21</b> <i>Authority Indemnity</i> and <b>Clause 27</b> <i>Termination</i>
j	Remaining affordability risk - namely (i) affordability implications that arise as a result of Indexation to the Unitary Charge being higher than predicted at financial close, (ii)		✓		The Council has requested a "super indemnity" from DfE to cover this risk, which has not been accepted by DfE.  DfE have clarified that indexation risks (i) and (ii) should continue to be borne by the Council.	

Ref	Risk / Responsibility	Caludon Castle	Coventry City Council	DfE	Notes	DRAFT SCHOOL AGREEMENT REFERENCE
	indexation cost being higher than predicted due to any or all risks a -i materialising, and or (iii) DSG topslice indexation being lower than predicted at financial close.				DfE have clarified that in terms of indexation risk (iii) the Council will continue to bear this risk whilst the recoupment model for funding schools is in operation. Post-recoupment, the DfE is unwilling to give any assurances about taking on the risk from the Council.	



**Dated**

**2013**

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

**(2) Caludon Castle School  
(Tenant)**

Clean copy - Dec'12

## **Lease**

Land and buildings at  
Caludon Castle School  
Axholme Road  
Wyken in the City of Coventry

**Term:** 125 years

**Rent:** Peppercorn (if demanded)

**Ref:** L/JS/7002-1011

Caludon Castle School-12-js



Coventry City Council

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	SCHEDULE 1 - THE PROPERTY	
	SCHEDULE 2 - RIGHTS GRANTED	
	SCHEDULE 3 - RIGHTS EXCEPTED AND RESERVED	



<b>LR1.</b>	<b>Date of lease:</b>	2013						
<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;">WM801376</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>	WM801376	<b>LR2.2</b>	<b>Other title number(s):</b>	None
<b>LR2.1</b>	<b>Landlord's title number(s):</b>	WM801376						
<b>LR2.2</b>	<b>Other title number(s):</b>	None						
<b>LR3.</b>	<b>Parties to this lease:</b>							
	<b>Landlord:</b>	The Council of the City of Coventry Council House Earl Street Coventry CV1 5RR						
	<b>Tenant:</b>	Caludon Castle School a company limited by guarantee registered in England and Wales (Company number.....) whose registered office is at Axholme Road Wyken Coventry CV2 5BD						
<b>LR4.</b>	<b>Property:</b>	Please see the definition of "Property" in clause 1.1						
	<b>(referred to in the remainder of this lease as the "Property")</b>	In the case of conflict between this clause and the remainder of the lease then for the purpose of registration this clause shall prevail						
<b>LR5.</b>	<b>Prescribed statements etc:</b>	<p>LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity) 180 (dispositions by a charity) or 196 (lease under the Leasehold Reform Housing and Urban Development Act 1993) of the Land Registration Rules 2003</p> <p>See clause 10 of this Lease</p> <p>LR5.2 None</p>						
<b>LR6.</b>	<b>Term for which the Property is leased:</b>	The term is as follows: 125 years from and including the        day of        2013						
	<b>(referred to in the remainder of this lease as the "Term")</b>							
<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>							
	<b>LR9.1</b>	<p>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:</p> <p>None</p>						

	<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 First 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 Second 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>	The parties to this Lease apply to enter the following standard form N Restriction against the title to the Property:  <i>"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London WS1P 3BT"</i>
<b>LR14.</b>		<b>Declaration of trust where there is more than one person comprising the Tenant:</b>	Not applicable

**BETWEEN:**

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of Council House Earl Street Coventry CV1 5RR ("the Landlord")
- (2) **CALUDON CASTLE SCHOOL** a company Limited by guarantee registered in England and Wales whose registered office is at Axholme Road Wyken Coventry CV2 5BD ("the Tenant")

**NOW IT IS HEREBY AGREED** as follows:-

**PART A: PRELIMINARY**

**1. Definitions and Interpretation**

1.1 In this Lease unless the context otherwise requires the following words and expressions shall have the following meanings:-

<b>"Amenities"</b>	drainage water gas electricity telephone and any other services or amenities of like nature
--------------------	---

<b>"Buildings"</b>	all building structures and other erections whether temporary or permanent that are in the course of being constructed or have already been constructed in on or under the Property
--------------------	---

<b>"Conduits"</b>	gutters gullies pipes sewers drains watercourses channels ducts flues wires aerials cables mains cisterns tanks and all other conducting media together with all meters and other apparatus used in connection with them
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<b>"Environment Acts"</b>	the Environmental Protection Act 1990 the Environment Act 1995 the Water Resources Act 1991 the Water Industry Act 1991 and any other Law or Laws of a similar nature in force at any time during the Term
---------------------------	--

<b>"Extended Learning Centre and Youth Centre"</b>	all that area shown coloured blue on the Plan
--	---

<b>"Fixtures and Fittings"</b>	all fixtures and fittings in or upon the Property to include plant machinery lifts boilers central heating air conditioning lighting plumbing sanitary and sprinkler systems hardware and cabling fibre patch panels cables and leads and any other apparatus from time to time in or upon the Property
--------------------------------	---

<b>"Funding Agreement"</b>	(a) an agreement pursuant to [Section 1 of the Academies Act 2010] made between (1) the Secretary of State for Education and (2) [name of Academy Trust]
----------------------------	--



- (b) any replacement or renewal of such agreement between the same parties and in substantially the same form and
- (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"**

- (a) during the period that the Project Agreement subsists the Project Insurances and
- (b) where there is no Project Agreement subsisting

fire smoke damage 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

<b>"Law"</b>	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
<b>"Lease"</b>	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
<b>"the Library"</b>	shall mean all that community library situate on the ground floor of the building forming part of the Property shown coloured green on the Plan
<b>"Necessary Consents"</b>	means those authorisations in valid form which are necessary lawfully to carry out the demolition of any Buildings including without limitation (1) planning permission and approval of reserved matters; (2) building regulation consents and byelaw approvals; (3) the requirements of all competent authorities regulating the Property and/or its use; (4) all necessary orders for the stopping-up or diversion of highways or footpaths; and (5) the consents of all parties having interests in or rights over the Property who in the absence of such consent could impede the demolition of any Buildings by its lawfully exercising their powers
<b>"Outgoings"</b>	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)
<b>"PFI Licence"</b>	means the licence granted to the Project Co pursuant to clause 8 of the Project Agreement
<b>"Plan"</b>	the plan annexed to this Lease
<b>"Planning Acts"</b>	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

<b>"Premises Acts"</b>	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>"Principal Agreement"</b>	means the agreement between the Landlord (1) the Tenant (2) and the Secretary of State for Education known as the Principle Agreement and dated day of 20
<b>"the Project Co"</b>	means Coventry Education Partnership Limited
<b>"Project Agreement"</b>	means an agreement made between the Landlord (1) and Project Co (2) and dated the 7th December 2004 relating to the construction and provision of services to various buildings and services on the Property and any variation or renewal of such agreement
<b>"Project Insurances"</b>	the insurance policies set out in the Project Agreement taken out and maintained by the Project Co pursuant to the Project Agreement
<b>"Property"</b>	the property described in Schedule 1
<b>"Public Right of Way"</b>	shall mean all that public right of way shown with a broken green line on the Plan
<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></ul>



	(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>"Retained Land"</b>	all that Extended Learning Centre and Youth Centre together with all and any adjoining land and premises belonging to the Landlord for the time being and referred to in Schedule 2 and Schedule 3
<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 Academy at the relevant time
<b>"School"</b>	Caludon Castle School Axholme Road Coventry West Midlands CV2 5BD
<b>"School's Agreement"</b>	an agreement made between the Landlord (1) the Tenant (2) dated day of 20
<b>"Term"</b>	125 years from and including the Term Commencement Date
<b>"Term Commencement Date"</b>	day of 2013
<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
  - 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 andif 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 including during the period that the Project Agreement subsists the Project Co or its successors under the Project Agreement and their servants agents contractors and includes a right of entry with workmen equipment and materials
- 1.2.16 pursuant to the Perpetuities and Accumulations Act 1964 the perpetuity period applicable to this Lease is eighty (80) years from the Term Commencement Date and whenever a future interest is granted it shall vest within that period and if it does not it will be void for remoteness
- 1.2.17 the table of contents and headings to Clauses paragraphs and Schedules do not affect the construction of this Lease
- 1.2.18 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
- 1.2.19 a right excepted or reserved to the Landlord is also reserved to any other person entitled to it and/or authorised by the Landlord and during the period that the Project Agreement subsists shall also be exercisable by or on behalf of the Project Co or its successors under the Project Agreement and their servants agents and contractors
- 1.2.20 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
- 1.2.21 nothing entitles the Tenant to enforce any obligation given by anyone to the Landlord
- 1.2.22 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
- 1.2.23 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
- 1.2.24 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
- 1.2.25 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
- 1.2.26 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

1.2.27 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

1.2.28 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 the Public Right of Way and such other rights of way (if any) affecting the Property which are still subsisting and capable of taking effect

**3. Tenant's Covenant**

Save to the extent that any of the Tenant's obligations contained in this Clause 3 are the responsibility of Project Co under the Project Agreement 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 provided always that if any Outgoings are payable in respect of the Retained Land as well as the Property without apportionment to pay a fair and proper proportion of the same to be conclusively determined by the Landlord acting reasonably

3.2.2 To pay for all Amenities exclusively used by or available to the Property (including all standing charges) provided that whilst the Project Agreement is subsisting the Tenant's obligation to pay for Amenities shall be suspended and the Tenant shall during this period comply with its obligations set out in Clause [ ] of the School's Agreement

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 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

Provided that the Tenant shall not be in breach of this covenant in the event that the Property is not in the required state of condition and repair as a result of a breach by the Landlord of the Landlord's obligations under the Schools Agreement



- 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 shown with "T" marks on the Plan PROVIDED THAT nothing in this clause shall oblige the Tenant to put fencing across the public footpath running through the South West of the Property nor to erect any new fencing in that area not in existence at the date of this Lease

**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 payment of the funding instalment relating to that section of works under the programme of works agreed pursuant to the Funding Application ("Works Programme") and all works shall be completed within a reasonable period following the last payment under the 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 or the Project Agreement and to comply with any obligations of the Landlord (whether arising under this Lease the Project Agreement 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 (1) whilst the Project Agreement is subsisting be in accordance with the terms and conditions (if any) for the exercise of such rights as are contained in the Project Agreement and shall (2) at all times whilst there is no Project Agreement subsisting 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**

Whilst there is no Project Agreement subsisting Clauses 3.5.1 to 3.5.7 shall apply:-

#### 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 or any occupiers of any part or parts of the Retained Land

3.5.7 Not to carry out any erection alteration addition or variation which hinders access to a Conduit

3.5.8 During the period that the Project Agreement subsists the Tenant shall not make any or procure any alterations or addition to the Property save in accordance with the provisions of Clause of the Schools Agreement

### 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

3.8.1 Subject to Clause 3.8.2 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

3.8.2 The Tenant may give written notice to the Landlord not less than six months before the Termination Date of its intention to demolish all Buildings The Tenant shall at its own cost:

- (a) obtain all Necessary Consents before commencing any such works
- (b) observe and perform any conditions attached to the Necessary Consents in carrying out the demolition works
- (c) demolish all Buildings and make good all damage to the property (including the clearance and removal of all rubble) to the reasonable satisfaction of the Landlord

PROVIDED THAT the Landlord may within 20 working days of receipt of a notice served pursuant to this clause indicate to the Tenant that it requires the Tenant to leave the Property in situ and comply with the covenant in Clause 3.8.1

### 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 (a)
- (c) whilst the Project Agreement is subsisting the Tenant's use of the Property in accordance with this clause 3.9.3 shall be in accordance with the terms and conditions of the Schools Agreement

### 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 and 3.12.5 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 During the subsistence of the Schools Agreement where the Tenant's interest in the Schools Agreement is assigned in accordance with Clause of the Schools Agreement the Tenant shall simultaneously assign the benefit of this Lease to the assignee of the Tenant's interest in the School's Agreement

3.12.6 During any period when there is no Project Agreement subsisting:

(a) not to underlet the whole Property and

(b) not to underlet any part or parts of the Property for a term (including any option to renew) in excess of 10 years provided that no more than three underleases are subsisting at the Property at any one time during the Term

3.12.7 During the subsistence of the Project Agreement not to underlet the whole of the Property



3.12.8 During the subsistence of the Project Agreement not to underlet any part or parts of the Property without the prior written consent of the Landlord and the parties agree that:

- (a) the Landlord may not unreasonably withhold or delay its consent to a proposed underletting where the underlease is in a form which is not inconsistent with the terms of this Lease or of the Project Agreement
- (b) the maximum term (including any option to renew) of any underlease granted pursuant to this Clause 3.12.8 will be 10 years
- (c) the Tenant shall not underlet any part or parts of the Property unless, before the underlease in question is granted, the Tenant has given the Landlord:
  - (i) a certified copy of the notice served on the undertenant, as required by section 38(A)(3)(a) of the 1954 Act, applying to the tenancy to be created by the underlease
  - (ii) a certified copy of the declaration or statutory declaration made by the undertenant in accordance with the requirements of section 38(A)(3)(b) of the 1954 Act and
  - (iii) a direct deed of covenant from the undertenant in a form approved by the Landlord (acting reasonably) in favour of the Landlord whereby the undertenant covenants to comply with the tenant's covenants contained in the underlease
- (d) any underletting by the Tenant shall be by deed and shall include an agreement between the Tenant and the undertenant that the provisions of section 24 to 28 of the 1954 Act are excluded from applying to the tenancy created by the underlease
- (e) the Tenant shall not grant any lease or rights to a telecommunication company or operator where the use of any equipment to be installed on the Property is intended to be used or made available for use by the general public

3.12.9 Not to charge the whole or any part or parts of the Property without the Landlord's 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 21 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 Where there is no Project Agreement subsisting the Landlord shall:

4.2.1 not do or omit anything as a result of which any policy of insurance of the Property may become void or voidable or otherwise prejudice or the payment of any policy money may be withheld, nor (unless the Landlord has previously notified the Tenant and has paid any increased or additional premium) anything as a result of which any increased or additional insurance premium may become payable

4.2.2 pay the Tenant an amount equal to any insurance money that the insurers of the Property refuse to pay by reason of any act or omission of the Landlord or any undertenant their workers contractors or agents or any person at the Property with the actual or implied authority of any of them in payment of the costs and expenses incurred by the Tenant in complying with its rebuilding and reinstatement obligations at Clause 5.1.3 of this Lease within 14 days of receipt of a written demand for payment from the Tenant

#### 5. Insurance

5.1 Where there is no Project Agreement subsisting the Tenant covenants with the Landlord:-

5.1.1 to keep the Property insured on a composite co-insured basis with the Tenant and the Landlord named as co-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
- 5.3 The Landlord confirms that Project Co is responsible for taking out and maintaining the Project Insurances and the parties agree that during the subsistence of the Project Agreement the Landlord shall procure that the Property is kept insured by Project Co in accordance with the Project Insurances or is otherwise insured on a substantially similar basis by the Landlord Provided that the Landlord shall not be obliged to insure or procure to be insured any part of the Property installed by the Tenant
- 5.4 During the subsistence of the Project Agreement the Tenant may terminate this Lease by giving notice to the Landlord if, following damage or destruction by an Insured Risk, the Property has not been reinstated so as to be fit for occupation and use within three years after the date of damage or destruction On giving this notice this Lease shall determine but this shall be without prejudice to any right or remedy of the Landlord in respect of any breach of the Tenant's covenants of this Lease Any proceeds of the insurance shall belong to the Landlord

## 6. **Provisos**

### 6.1 **Re-Entry**

Where there occurs a breach by the Tenant of Clause 3.9 and/or 5.1.3 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

- 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 the Retained Land or affecting any other 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 the            day of            2012 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            2012 in accordance with the requirements of section 38A(3)(b) of the 1954 Act



## 6.7 Termination

- 6.7.1 This Lease shall automatically determine 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
- 6.7.5 In the event that the Project Agreement terminates prior to the Expiry Date as a result of Authority Default (as both terms are defined in the Project Agreement) and
- (a) a breach by the Tenant of the School Agreement is the substantial cause of the Authority Default in question and
  - (b) the Secretary of State makes a material payment to the Landlord as a result of the Project Agreement termination pursuant to its obligation at Clause 5 of the Principal Agreement

then the Landlord may give to the Tenant a notice in writing expiring on the 31 August which next follows after the date of service of such notice and then on the termination of this Lease under this Clause 6.7.5 this Lease and 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 the 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 [ ] an exempt charity

11. **Arbitration**

Any disputes or differences arising as between the Landlord and the Tenant as to its respective rights duties or obligations or as to any other matter arising out of or in connection with this Lease shall (unless hereinbefore provided to the contrary) be referred to an independent surveyor to be agreed between the parties hereto and in default of agreement to be appointed (upon application by either party to the President or his deputy for the time being of the Royal Institute of Chartered Surveyors) PROVIDED THAT where any dispute or difference involves a legal interpretation as to any matter arising out of or in connection with this Lease then the parties may agree (acting reasonably) a solicitor or barrister who is an expert in the field of property law to determine the matter such expert to be agreed between the parties hereto or in default of agreement to be appointed by the President or his deputy for the time being of the Law Society or the successors of that body the expert to act as a single arbitrator in accordance with the provisions of the Arbitration Act 1996

**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 **CALUDON CASTLE SCHOOL** acting by a Director in the presence of:

Director

Witness Signature: .....

Witness Name: (Print) .....

Witness Address: .....

.....

Witness Occupation: .....

Caludon Castle School-12-js



**The Property**

**ALL THAT** land and buildings situate at the Caludon Castle School situated in Axholme Road Wyken 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)

**BUT EXCLUDING**

- (c) the Extended Learning Centre and Youth Centre



**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 the Retained 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

**3. Access to Retained Land**

The right upon giving reasonable prior written notice (except in case of emergency) to the Landlord and all others from time to time so entitled to enter only so far as is strictly necessary upon the Retained Land for the purpose of inspecting and executing repairs to or on the Property subject to the Tenant:-

- 3.1 causing as little damage disturbance or inconvenience as possible to the Landlord and all others from time to time so entitled and
- 3.2 making good as soon as reasonably practicable to the reasonable satisfaction of the Landlord and to all others from time to time so entitled all damage caused by the exercise of this right



**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 Retained Land notwithstanding that such buildings or user may affect the access of light or air coming to the Property
2. The free flow of water soil gas electricity and other supplies to and from the Retained Land 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 provided that such connections do not overload the capacity of the Conduits in on or under the Property and subject first to obtaining the approval of the Tenant to the points of connection (such consent not to be unreasonably withheld or delayed
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 on 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:-
  - 4.1 inspect cleanse connect lay repair remove relay replace with other alter or execute any works whatever in connection with the conduits referred to in Clause 2 of this Schedule
  - 4.2 carry out any work or do anything whatsoever comprised 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
  - 4.3 exercise any of the rights granted to the Landlord by this Lease
  - 4.4 view the state and condition and repair of the Property
5. 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

6. 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 Landlord 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

7. 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 Landlord and use every effort to assist the Landlord's use of the Property notwithstanding any hiring arrangements that are in place for use of the Property at that time
8. The right to enter the Property to exercise any of the Landlord's rights or discharge any of the Landlord's obligations pursuant to the Project Agreement
9. The right for the Council (in common with all others entitled to the like rights) over across and through the Property (as reasonably necessary) to gain access and egress to and from the Extended Learning Centre and Youth Centre for all proper purposes for the use enjoyment repair and maintenance of the same TOGETHER WITH the right for visitors to use the car parking facilities within the Property
10. The right for the Council (in common with members of the public and all others entitled to the like right) over across and through the Property (as reasonably necessary) to gain access to and from the Library TOGETHER WITH the right for visitors to the Library to use the car parking facilities within the Property

Caludon Castle School-12-js

**APPENDIX 4**

**Dated**

**2012**

- (1) Coventry City Council**
- (2) The Governing Body of  
Caludon Castle School  
and Business and  
Enterprise  
College**
- (3) Caludon Castle School**

## **Transfer Agreement**

Re: Caludon Castle School

Ref: L/RL

**BETWEEN:**

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of The Council House Earl Street Coventry CV1 5RR (the "Council");
- (2) **THE GOVERNING BODY OF CALUDON CASTLE SCHOOL AND BUSINESS AND ENTERPRISE COLLEGE** of Axholme Road Wyken Coventry CV2 5BD (the "Governing Body");
- (3) **CALUDON CASTLE SCHOOL** a company limited by guarantee registered in England and Wales (company number [●]) whose registered office is at Axholme Road Wyken Coventry CV2 5BD (the "Company").

**WHEREAS**

- (A) The School will close and the Company will, from the Transfer Date, operate the Academy on the same site as the School.
- (B) The freehold of the site of the School is owned by the 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:-

<b>“Academy”</b>	means the academy to be run by the Company on the site of the School under the proposed name Caludon Castle School;
<b>“Assets”</b>	means all property, undertaking, rights and assets, whether tangible or intangible, of whatever nature used or held by the Council and/or the Governing Body (as the case may be) for the purposes of the School including but not limited to those listed in Schedule 3, but excluding the Excluded Assets;
<b>“Contractor”</b>	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;
<b>“Contracts”</b>	means the contracts 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 those contracts listed in Schedule 2 (true and accurate copies of which have been disclosed to the Company prior to the Transfer Date), and where such contract was entered into by the Council and relates to other schools operated by the Council as well as the School then only such part of the contract that relates to the School, in each case excluding the Excluded Contracts;
<b>“Data Protection Legislation”</b>	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

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[●] To be added once Company is incorporated.

	guidance and codes of practice issued by the Information Commissioner;
<b>“Directive”</b>	means the Safeguarding of Employees Directive (2001/23/EC) (as amended, re-enacted or extended from time to time)
<b>“Eligible Employees”</b>	means the Transferring Employees who are active members of or eligible to join either the LGPS or the TPS immediately before the Transfer Date;
<b>“Employee Liability Information”</b>	means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of the Regulations
<b>“Employee Schedule”</b>	means a list of all School Employees as at the date that the list is provided to the Company;
<b>“Encumbrance”</b>	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;
<b>“Excluded Assets”</b>	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>“Final Employee Schedule”</b>	means a list of all School Employees as at the Transfer Date;
<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 and/or the Governing Body, including without limitation a copy of any contractual documentation, any documentation relating to job description, pay information, training records, information relating to sickness absence, a copy of any disciplinary warnings and a copy of any grievances;
<b>“the Pupil Records”</b>	means the following records and information in respect of the pupils at the School who will or who are likely to become pupils at the Academy: all electronic records and paper files in respect of pupils;

<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 Caludon Castle School and Business and Enterprise College;
<b>“School Fund”</b>	means the money which has accumulated in one or more separate school accounts arising from (a) voluntary donations and (b) staff contributions in respect of leaving gifts and other collections;
<b>“School Employees”</b>	means any employees of the Council or of the Governing Body or of any other persons who are assigned to the School or to services provided in connection with the School;
<b>“Staffing Information”</b>	means, in respect of the School Employees, the information listed in Schedule 1;
<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.

## **1. CONDITION PRECEDENT**

This Agreement is conditional upon the Funding Agreement being signed by the Company and the Secretary of State on or before 1 2013. 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.

## **2 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.

## **3 PROVISION OF STAFFING INFORMATION AND WARRANTIES**

- 3.1 Without prejudice to its obligation pursuant to the Regulations to provide the Employee Liability Information, the Council shall on or before 10 December 2012 to the extent lawfully permitted provide the Company with the Employee Schedule and Staffing Information.
- 3.2 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.
- 3.3 The Council warrants:
- 3.3.1 that the information in the Employee Schedule and the Staffing Information shall be complete and accurate and kept up-to-date;
- 3.3.2 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;
- 3.3.3 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;
- 3.3.4 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;
- 3.3.5 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
- 3.3.6 that by the Transfer Date all Transferring Employees will have been checked against List 99 or the Children's Barred List (as appropriate) and checked through the Criminal Records Bureau and all other checks required by law.
- 3.4 The Council undertakes to the Company that during the period from the date of this Agreement up to and including the Transfer Date:

- 3.4.1 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;
- 3.4.2 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:
- 3.4.2.1 amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay and job description) of any School Employees (other than where such amendment or variation has previously been agreed between the 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);
  - 3.4.2.2 terminate or give notice to terminate the employment or engagement of any School Employees (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - 3.4.2.3 employ or assign any person to the School who would or might as a consequence of such employment or assignment become a Transferring Employee;

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.

#### **4 APPORTIONMENTS**

- 4.1 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 and including the Transfer Date, and will indemnify the Company (both for itself and any Contractor) against all Losses incurred by the Company or any Contractor in respect of the same.
- 4.2 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 after the Transfer Date, and will indemnify the Council against Losses in respect of the same.

#### **5 INFORMATION AND CONSULTATION**

- 5.1 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.
- 5.2 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.

#### **6 INDEMNITIES**

- 6.1 The Council shall indemnify the Company (either for itself or for or on behalf of any other person to whom the Transferring Employee or any liability relating to them has transferred or is alleged to have transferred) against all Losses incurred by the Company in connection with or as a result of:

- 6.1.1 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);
- 6.1.2 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;
- 6.1.3 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
- 6.1.4 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.
- 6.2 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:
  - 6.2.1 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
  - 6.2.2 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.
- 6.3 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 that party in connection with or as a result of:
  - 6.3.1 any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Company or the Contractor, as the case may be, in respect of any Transferring Employee on or after the Transfer Date;
  - 6.3.2 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

- 6.3.3 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.

## 7 PENSIONS

- 7.1 The parties acknowledge that the Academy 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).
- 7.2 The parties acknowledge that the Academy 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).
- 7.3 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.
- 7.4 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.
- 7.5 The Company shall be responsible for all employer contributions payable to the LGPS and the TPS in respect of the Eligible Employees and any other sum due to the LGPS and the TPS in respect of the Eligible Employees.
- 7.6 The Company shall:
- 7.6.1 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;
- 7.6.2 promptly provide to the Council such documents and information which the Council may reasonably request in advance of any onward transfer of any person engaged or employed by the Company; and
- 7.6.3 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.

## 8 THE ASSETS AND THE CONTRACTS

- 8.1 On the Transfer Date the Council and/or the Governing Body (as applicable) will transfer (or to the extent that it is not the owner thereof shall procure the transfer of) the legal and beneficial interest in the Assets, free of charge and free from any Encumbrance, to the Company, save for any Encumbrance which has been fully and accurately disclosed to the Company prior to the Transfer Date.
- 8.2 The Excluded Assets shall be excluded from the transfer under this Agreement.

- 8.3 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.
- 8.4 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.
- 8.5 The Council and/or Governing Body (as applicable) undertakes with effect from the Transfer Date to assign to the Company or to procure the assignment to the Company all the Contracts:
- 1.1.1 which are capable of assignment without the consent of other parties to those contracts; and
- 1.1.2 where consent is required to assignment and such consent has been received.
- 8.6 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:
- 8.6.1 this Agreement shall not constitute an assignment or an attempted assignment of the Contract if the assignment or attempted assignment would constitute a breach of the Contract;
- 8.6.2 after the Transfer Date the parties shall use their respective reasonable endeavours to obtain the consent of the other party to the assignment, and then to assign or to procure the novation, of the Contract; and
- 8.6.3 until the consent or novation is obtained:
- 8.6.3.1 the Council or the Governing Body (as the case may be) shall hold the same on trust for the Company and shall (at its 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);
- 8.6.3.2 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
- 8.6.3.3 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.
- 8.7 Pending the Transfer Date, possession of the Assets shall be retained by the Council and/or the Governing Body (as the case may be).
- 8.8 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.

- 8.9 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.
- 8.10 (a) The Company and the Council acknowledge that there is an ongoing joint claim by the Governing Body and the Council against Computer Systems in Education Limited in relation to a number of school desks (court claim number: 2CV90005) (the “**Claim**”). The Governing Body agrees to and does hereby assign all its rights in respect of the Claim and the related court action to the Company and the Company hereby agrees to keep the Governing Body indemnified in respect of all claims proceedings costs demands and expenses in respect of the Claim and the related court action.
- (b) The Company and the Council hereby agree that the burden of legal costs incurred or ordered to be paid in respect of the Claim and the related court action and of storage/transport costs incurred in respect of the school desks and also the benefit of any damages/compensation/costs recovered in relation to the Claim/related court action / school desks, shall be shared equally between them. In the event that monies received in relation to the Claim/related court action/ desks are paid directly to the Council, the Council agrees to procure the prompt payment of the appropriate sum to the Company (and vice versa if monies are paid directly to the Company) after any necessary adjustment in relation to the proper apportionment of costs incurred.
- 8.11 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).
- 8.12 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).
- 8.13 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.
2. The parties shall work together in a spirit of co-operation and partnership to attempt to achieve the aims and objectives set out in schedule 6 (Memorandum of Understanding)

## **9 CONDUCT OF CLAIMS**

9.1 In respect of the indemnities given in this Agreement:

- 9.1.1 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;
- 9.1.2 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
- 9.1.3 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.

## **10 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.

## **11 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.

## **12 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.

## **13 GENERAL**

- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 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.

- 13.5 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).
- 13.6 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.
- 13.7 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.
- 13.8 Any notice shall be deemed to have been duly received:
  - 13.8.1 if delivered personally, when left at the address and for the contract referred to in this Clause; or
  - 13.8.2 if sent by pre-paid first class post or recorded delivery, at 9.00 a.m. on the second business day after posting; or
  - 13.8.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 13.9 A notice required to be given under this Agreement shall not be validly given if sent by email.
- 13.10 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.
- 13.11 Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of this Agreement.
- 13.12 This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in and supersedes any previous agreement between the parties.
- 13.13 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.

#### 14 **GOVERNING LAW AND JURISDICTION**

- 14.1 This Agreement will be governed by and interpreted in accordance with the law of England and Wales.
- 14.2 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  
COVENTRY CITY COUNCIL**

Was here to affixed in the presence of  
)

.....  
Authorised signatory

**SIGNED** as a **DEED** by  
\_\_\_\_\_,and  
\_\_\_\_\_

**GOVERNING BODY OF CALUDON  
CASTLE SCHOOL AND BUSINESS  
AND ENTERPRISE COLLEGE**

.....  
Head Teacher

in the presence of:

.....  
Chair of Governors for and on behalf of the

Signature of witness:

Witness' name:

Witness' address: )

**SIGNED** as a DEED by **CALUDON  
CASTLE SCHOOL** acting by  
\_\_\_\_\_, a director )

.....

in the presence of:

Director

Signature of witness:

Witness' name:

Witness' address:

## SCHEDULE 1

### STAFFING INFORMATION

#### 1. Individual terms and conditions

1.1 Copies of all current employment contracts, and all other terms and conditions of employment.

1.2 A schedule comprising in respect of each employee, the following particulars:-

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

and all other benefits whether contractual or otherwise.

1.3 Details of any recent changes of terms and conditions in relation to any employee.

1.4 Copies of any employee handbooks, rules and other policies, procedures, arrangements or agreements in relation to:-

- (a) redundancy procedures and payments;
- (b) redeployment procedures;
- (c) sickness absence and sick pay entitlements;
- (d) equal opportunities;

(e) disciplinary matters;

(f) maternity rights;

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

1.5 Copies of any job descriptions.

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

## 2. **Collective bargaining**

2.1 Details of the names of all trade union and other employee representatives, with the name of the trade union, the position held and how long the position was held.

2.2 Details of any trade union recognised by the Council / Governing Body, giving the date and details of the recognition agreement (and a copy if available), with brief details of current and historic labour relations and any pending negotiations.

2.3 Details of any other agreement, whether school, local or national, with any trade union or other body of employee representatives (and copies if available) including any informal recognition and procedure arrangements and other arrangements honoured by "custom and practice".

2.4 Details of which, if any, of the terms of any collective agreement form part of individuals' terms and conditions of employment.

## 3. **Disputes**

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

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

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

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

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

## 4. **Dismissals**

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

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

## 5. **Working Time Regulations 1998**

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

6. **Health and Safety**
  - 6.1 Details of any health and safety committees/representatives.
  - 6.2 Details of any health and safety complaints or recommendations or claims within the last 5 years.
7. **Trainees/Consultants**
  - 7.1 Details of all individuals in the undertaking working on training, work experience or similar schemes.
  - 7.2 Details of all consultancy agreements or self-employed personnel who are or may actually be employees.
8. **Absent employees**
  - 8.1 Details of all employees who have notified the Council / Governing Body that they are pregnant or who are currently absent on maternity leave.
  - 8.2 Details of all employees on long term sick leave together with confirmation of the nature of their illness and the duration and dates of their absence(s) due to that condition.
9. **Job Evaluation Scheme**
  - 9.1 A copy of any job evaluation scheme.
10. **Contractor Employees**
  - 10.1 Details of any individuals employed by contractors working in the school.
11. **Pension**
  - 11.1 A list of all pension schemes (both occupational and personal) applicable to the employees.
  - 11.2 Details of any current or pending applications for early retirement.

## SCHEDULE 2

### THE CONTRACTS

<u>Party</u>		<u>Date of Contract</u>	<u>Provision</u>
European Electronique	01 April 2011 – 31 March 2013	On-site Managed IT Service	
Complete Vending Services Machine		24 May 2011 – 23 May 2014	Coffee
Neopost Finance Ltd	01 Feb 2007 – 31 Jan 2013	Franking Machine	
Ricoh UK Ltd	01 July 2009 – 30 June 2012	Photocopier Machines and Servicing (21661784)	
Ricoh UK Ltd	01 July 2009 – 30 June 2012	Photocopier Machines and Servicing (21661785)	
Ricoh UK Ltd	01 July 2009 – 30 June 2012	Photocopier Machines and Servicing (21661777)	
Ricoh UK Ltd	01 August 2009 – 31 July 2012	Photocopier Machines and Servicing (21661785)	
Ricoh UK Ltd	01 August 2009 – 31 July 2012	Photocopier Machines and Servicing (21661800)	
Ricoh UK Ltd	01 August 2009 – 31 July 2012	Photocopier Machines and Servicing (21661795)	
Ricoh UK Ltd	01 August 2009 – 31 July 2012	Photocopier Machines and Servicing (21661793)	

### **SCHEDULE 3**

#### **THE ASSETS**

1. All equipment, furniture, fixtures and fittings on the site of the School (“the loose plant and equipment”), and any school desks forming part of the Claim stored elsewhere subject to all contractual obligations in respect of any part of the loose plant and equipment which is the subject of any leasing, hire or hire purchase agreements except, for the avoidance of doubt, the Excluded Assets.
2. All rights to use the name of the School and all logos and domain names used exclusively by the School. All copyrights, database rights and other intellectual property rights owned by the Council or Governing Body (as appropriate) and used exclusively by the School.
3. All rights of the Council or Governing Body (as appropriate) in respect of computer software used by the School whether granted by licence or otherwise.
4. Any balance remaining from the School's budget following completion of due accounting procedures.
5. The School Fund.

## **SCHEDULE 4**

### **THE EXCLUDED ASSETS**

#### **PART 1**

The following assets are excluded from this transfer:

1. The freehold or leasehold titles to the site of the School which are dealt with by separate agreement.
2. Cash in hand or at bank (other than any surpluses transferred to the Company from the Council and the Governing Body pursuant to the Academy Conversions (Transfer of School Surpluses) Regulation 2010).
3. The benefit of any grants made to the School in respect of periods before the Transfer Date.
4. All equipment furniture fixtures and fittings on the site of the School (the loose plant and equipment) which is set out in Part II of this Schedule)

**PART 2**

**[EXCLUDED ASSETS LIST TO BE INSERTED]**

**SCHEDULE 5**

**THE EXCLUDED CONTRACTS**

**THE PFI CONTRACT BETWEEN THE COUNCIL AND CEP LIMITED DATED 7<sup>TH</sup> DECEMBER 2004 WILL BE EXCLUDED**

## SCHEDULE 6

### MEMORANDUM OF UNDERSTANDING

#### **Caludon Castle School's role in Educational Improvement across the City**

1. Caludon Castle is an outstanding school (Ofsted November 2011) and recognised nationally as a National Lead School with the Headteacher a National Leader of Education. The school has a strong history of partnership working with the Local Authority and secondary and primary schools across the City. The School's Headteacher, Senior Leaders and Governors are committed to the Academy working in a way that maintains a commitment to partnership and collaboration between schools and with the Local Authority within Coventry family of schools.
2. The school's vision is to strengthen and develop its work and relationship with other schools in the City, both informally and formally, for example through targeted support arrangements, shared appointments, federated arrangements and as a future Academy Sponsor. The school has an excellent track record of providing effective support to other schools within and outside Coventry. The quality of the work has been very highly regarded and made a significant contribution to improvement.
3. Caludon Castle is a strategic partner in Coventry's Teaching School Alliance and is leading one of three Leadership Hubs in the City. The Headteacher makes a significant contribution to the City's Over-coming Barriers to Learning Strategy and the priority to improve Primary School performance. The school is building capacity and infrastructure now to be ready to take on a role across a number of schools in the future.
4. The Academy will support the delivery of the City Council's Education Improvement Strategy as detailed in the table below following discussion between the Local Authority and school. It is expected that the detailed support programme will be reviewed and agreed in July annually for the next academic year. The review will be undertaken by the Headteacher of the Academy and the Assistant Director: Education and Learning at Coventry City Council.

#### **City Wide School Improvement Role**

##### **Secondary School Improvement**

##### **Support City wide teaching and learning development**

- Learning and teaching consultant to provide expertise and resources for outstanding teaching and learning.
- Initial teacher training provider – Caludon has an enhanced partnership with Warwick University to provide much of training for PGCE trainee teachers in the City.
- Sponsorship of GTP placements (currently 6 sponsorship placements offered for 2012 – 2013 of which 3 are for maths). The intention is to specialise in training English and Mathematics teachers. The majority of trainees at Caludon Centre are awarded outstanding for their placements. This supplies high quality teachers to Coventry schools.
- Action researchers publish their findings to all schools in the City and all schools have access to appropriate resources.

##### **Support City wide Leadership and Management Development:**

- Leadership facilitators will provide opportunities for shadowing leaders (including those seeking headship/senior leadership through the NPQH programme); offering leadership

surgeries to raise standards in schools; spend time within facilities to observe outstanding practice and to receive a range of excellent and proven subject resources.

- Subsidised bespoke professional development offered through a range of leadership development programmes including National College Middle leader development programme.
- Provide of high quality senior leadership support based on a track record of outstanding leadership and school to school support. This includes specific improvement strategies, in particular coaching and mentoring and improving teaching from satisfactory to good.
- Caludon will be applying to become a Teaching school in September. This will strengthen the partnership with Swan Teaching School Alliance and increase the capacity for school to school support.
- Provision of leadership specialists to support Swan Teaching School Alliance and deliver a City wide primary leadership and management development programme.

### **Primary School Improvement**

#### **Provision of targeted support to Coventry Primary Schools:**

- Caludon Castle will provide high level school improvement support in up to 3 primary schools. This could include providing leaders and managers to the schools, teachers to improve the quality of teaching and learning and a professional development programme for all school staff.

#### **Provision of additional posts to support curriculum transition and improvement in primary schools:**

- Strategic leader of inclusive literacy with a cross phase brief.
- Leader for curriculum transition with a specific focus on the Expressive Arts (Art, Music and Drama) and learning beyond the classroom.
- Leader for maths with a role to support primary maths. These roles enable cross phase teaching: subject specialist advice and guidance; cross phase moderation of literacy and numeracy.

#### **Cross Phase and Inclusion:**

- Subsidised family link worker to work cross phase with identified vulnerable families.
- Subscription to the Citizenship Advice Bureau – staff trained as ‘satellite advisers’ for the Wyken Community sited in Caludon Community Library.



**Dated**

**2012**

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

**(2)**

Draft /

## **School Agreement**

relating to  
[ ] Academy

**Ref. L/RL**

Coventry School Agreement-12-rl

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**THIS AGREEMENT** is made on

2012

**BETWEEN**

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of the Council House Earl Street Coventry CV1\_5RR (the "**Authority**") and
- (2) [ ] (the "**Company**")

**BACKGROUND**

- (A) The Company is a company incorporated in England and Wales limited by guarantee with charitable objects
- (B) The Existing School is in an area in respect of which the Authority is the local education authority pursuant to Section 12 of the Education Act 1996
- (C) The Authority has entered into the Project Documents with a view amongst other things to procuring accommodation and related services at the Existing School
- (D) The Authority is proposing to enter into the Academy Contracts with a view to the Company operating an academy from the Site of the Existing School
- (E) The Company and the Authority have agreed the terms and conditions of this Agreement
- (F) The Company agrees that it is in the interests of the Company that it should enter into this Agreement which amongst other matters commits the Company to pay to the Authority a proportion of its budget and confirms to the Authority that some matters concerning the provision of the Services under the Project Agreement at the Existing School and subsequently the Academy shall be managed by the Authority in liaison with the Company as provided for in this Agreement and the Principal Agreement

**IT IS AGREED** as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:-

"**1954 Act**" means the Landlord and Tenant Act 1954

"**Academic Year**" as defined in clause 1.1 of the Project Agreement

"**Academy**" means the academy to be operated by the Company from the Commencement Date on the Site which expression shall include the Site and the Facility on the Site

"**Academy Contracts**" means this Agreement, the Principal Agreement and the Project Agreement Deed of Variation

"**Academy Direct Losses**" means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis, proceedings demands and charges whether arising under statute contract or at common law provided always that this shall not include Indirect Losses)

"**Additional Sessions**" as defined in clause 1.1 of the Project Agreement



**"Company Utilities Saving"** means for any month the amount by which the Actual Utilities Payment (as defined in the Project Agreement) payable by the Authority in that month is less than the Estimated Utilities Payment (as defined in the Project Agreement) in that month.

**"Compensation Event"** as defined in clause 1.1 of the Project Agreement

**"Company Assets"** means without limitation, any items of equipment and/or chattels brought onto the Site by the Company or Company Related Parties

**"Company Related Party"** means:-

- (a) an officer agent or employee of the Company acting in the course of his office or employment including without limitation any director of the Company or any member of the local governing body of the Academy
- (b) in relation to the Academy during the School Day any student of the Academy or any person visiting the Academy at the invitation (whether express or implied) of the Company and
- (c) in relation to the Academy during any period of Community Use any person using the Academy for that purpose at the invitation whether express or implied of the Company
- (d) in relation to the Academy during any Additional Session any student of the Academy or any person visiting the Academy at the invitation (whether express or implied) of the Company
- (e) in relation to the Academy those times and in respect of those parts of the Site as set out in schedule 14 of the Project Agreement for which responsibility is stated to be that of the Authority any student of the Academy
- (f) any contractors and their officers, employees and agents involved in the operation and/or maintenance of works or services at the Site procured by the Company

but excluding in each case the Authority, Authority Related Parties, the Provider and Provider Related Parties

**"Company Representative"** means the representative appointed by the Company pursuant to Clause 7.2

**"Dedicated Schools Grant or DSG"** has the meaning given to it in the Principal Agreement

**"Deductions"** in respect of the Academy any Unavailability Deductions, Unavailable but Used Deductions, Alternative Accommodation Deduction and/or Performance Deductions calculated pursuant to schedule 4 (Payment Mechanism) of the Project Agreement which reduces any monthly payment of the Unitary Charge by the Authority

**"Dispute Resolution Procedure"** means the procedure for resolution of disputes set out in Clause 23 (Dispute Resolution)

**"DFE"** means the Department for Education

**"Educational Services"** as defined in clause 1.1 of the Project Agreement

**"Emergency"** as defined in clause 1.1 of the Project Agreement

**"Existing School"** means Caludon Castle School and Business and Enterprise College

**"Expiry Date"** as defined in clause 1.1 of the Project Agreement

**"Extended Use Contractor"** as defined in clause 1.1 of the Project Agreement

**"Facility"** means the facilities edged green on the Site Plan

**"FM Contractor"** as defined in clause 1.1 of the Project Agreement

**"Funder Direct Agreement"** means the direct agreement dated on or about the date of this Agreement and made between the Authority and the Provider and Sumitomo Mitsui Banking Corporation Limited

**"Funding Agreement"** means the agreement entered into by the Company and the DFE dated on or about the date of this Agreement relating to the funding of the Academy and any agreement in writing which supersedes replaces or amends/varies that agreement;

**"Helpdesk"** means the helpdesk provided by the Provider pursuant to the Project Agreement

**"ICT"** means information and communications technology

**"Indirect Losses"** means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue in each case arising under this Agreement or loss of revenue in respect of Third Party Use

**"ICT Services"** means services related to the delivery maintenance and management of ICT

**"Information"** means all information, materials, documents and data relating to the Project including:-

- (i) the design or construction of the Existing School (including the Construction Phasing Proposals and the Construction Programme), the operation and maintenance of the Existing School and/or the Academy or other matters in connection with the Existing School under the Project Agreement
- (ii) all property matters referred to or otherwise identified in this Agreement and
- (iii) all changes and updates of any such information, material, document and data

**"Information Protocol"** the obligations on the parties to provide and share Information contained in Schedule 6

**"Intellectual Property Rights"** any and all patents, trade marks, service marks, copyright, moral rights, rights in a design know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto

**"Lease"** the lease referred to in Clause 8 and in the form set out in Schedule 4 with such amendments as are agreed by the Authority and the Company (both acting reasonably)

**"Legislation"** means:-

- (a) any Act of Parliament
- (b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978
- (c) any exercise of the Royal Prerogative and

(d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972

in each case in the United Kingdom

**"Maintenance Programme"** means the maintenance programme provided by the Provider to the Authority pursuant to clause 24.4 of the Project Agreement

**"New Facility"** as defined in clause 1.1 of the Project Agreement

**"Payment Date"** means five (5) Business Days before the Unitary Charge becomes due and owing by the Authority to the Provider in each Contract Month in accordance with schedule 4 of the Project Agreement

**"Performance Deductions"** as defined in clause 1.1 of the Project Agreement

**"PFI Provider Assets"** means those Assets (as defined in the Project Agreement) provided by the Provider to the Authority in accordance with the Project Agreement

**"Principal Agreement"** means the agreement between the Authority DFE and the Company known as the Principal Agreement dated on or about the date of this Agreement

**"Project"** the provision of Works and Services by the Provider to the Authority in relation to the Academy as contemplated in the Project Agreement

**"Project Agreement Deed of Variation"** means the deed dated on or about the date of this Agreement between the Authority and the Provider to vary the terms of the Project Agreement to reflect the closure of the Existing School as a community school on the day immediately preceding the Commencement Date and the opening of the Academy on the Commencement Date

**"Project Agreement"** the agreement dated 7th December 2004 between the Authority and the Provider relating to the provision of the Works and Services at the Existing School made under a Private Finance Initiative arrangement (as amended from time to time)

**"Project Documents"** the Project Agreement and the Funder Direct Agreement

**"Project Insurances"** the insurance policies described in schedule 9 of the Project Agreement taken out and maintained by the Provider under clause 62 of the Project Agreement

**"Provider"** means Coventry Education Partnership Limited (Company No. 5188350) being the counterparty of the Authority to the Project Agreement

**"Provider Default"** as defined in clause 1.1 of the Project Agreement

**"Provider Related Party"** as defined in clause 1.1 of the Project Agreement

**"Provider Variation"** means a Variation proposed by the Provider accordance with clause 58.3 of the Project Agreement

**"Relevant Proportion"** for the period from the Commencement Date until the earlier to occur of the Termination Date or the Expiry Date 9.5 % of the Revised Adjusted Schools Budget

**"Relief Event"** as defined in clause 1.1 of the Project Agreement

**"Revised Adjusted Schools Budget"** has the meaning given to it as calculated in accordance with paragraph 1 of Schedule 2 to this Agreement

"**Schedule**" means a schedule to this Agreement

"**School Day**" means 07.30 to 18.00 each Monday to Friday during any of the Terms for each year (including days set aside for teacher training)

"**School Liaison Procedure**" means the procedure set out in Schedule 1 to this Agreement

"**Services**" means the services to be delivered by the Provider to the Authority pursuant to the Project Agreement

"**Site**" means the area edged red on the Site Plan

"**Site Plan**" the plans of the Site as attached to the Lease

"**Small Works Change**" means a request for Small Works to be carried out to the Academy in accordance with clause 58.2 of the Project Agreement

"**Sub-Contractor**" as defined in clause 1.1 of the Project Agreement

"**Sub-Contractor Direct Agreement**" means the collateral warranties provided for the benefit of the Authority from each of the Building Contractor, FM Contractor and Professional Team in accordance with clause 4 and part 1 of schedule 1 of the Project Agreement

"**Term**" in relation to the Academy any of the terms notified to the Authority in accordance with Clause 20.3.1(c) of this Agreement

"**Termination Date**" the date of early termination of the Project Agreement in accordance with its terms or the date of early termination of this Agreement in accordance with its terms whichever the earlier

"**Third Party Use**" means use of the New Facility facilitated by the Provider or the Extended Use Contractor other than at the invitation of the Authority

"**Unavailability**" as defined in schedule 4 (Payment Mechanism) of the Project Agreement

"**Unavailability Deductions**" as defined in clause 1.1 of the Project Agreement

"**Unitary Charge**" as defined in clause 1.1 of the Project Agreement

"**Variation**" as defined in clause 1.1 of the Project Agreement

"**VAT**" means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994

"**Works**" means the works delivered by the Provider to the Authority pursuant to the Project Agreement.

## 1.2 **Interpretation**

In this Agreement unless the context otherwise requires:-

- 1.2.1 capitalised terms defined in the Project Agreement as the context requires (unless otherwise defined in this Agreement) have the same meaning in this Agreement;
- 1.2.2 headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Agreement;
- 1.2.3 all references to Clauses and Schedules are references to the clauses of and the schedules to this Agreement unless otherwise stated;

- 1.2.4 the Schedules form part of this Agreement;
- 1.2.5 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or other instrument as amended supplemented substituted novated or assigned from time to time;
- 1.2.6 all references to any statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders regulations codes of practice instruments or other sub-ordinate legislation made under the relevant statute or statutory provision;
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a gender include all genders;
- 1.2.9 "person" includes an individual, partnership, firm, trust, body, corporate, government, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.10 the words "include" and "including" are to be construed without limitation;
- 1.2.11 references to sub-contractors shall be to sub-contractors of any tier;
- 1.2.12 a requirement not to unreasonably withhold consent includes a requirement not to unreasonably delay the giving or withholding of that consent;
- 1.2.13 in relation to the parties references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation
- 1.2.14 References to other persons shall include their successors and assignees;
- 1.2.15 reference to "parties" means the parties to this Agreement and reference to "a party" means one of the parties to this Agreement; and
- 1.2.16 in the event that the provisions of this Agreement are inconsistent with the terms of the Principal Agreement, the terms of the Principal Agreement prevail to the extent of any inconsistency.
- 1.3 For the avoidance of doubt, the terms of this Agreement operate as between the Authority and the Company and are not intended to effect an assignment, novation or other transfer by the Authority to the Company of any of the rights and obligations of the Authority under the Project Agreement.

## **2. COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall come into force on the date of hereof and subject to clause 27 (Termination) and clause 2.2 shall continue in force until the earlier to occur of the Termination Date and the Expiry Date.
- 2.2 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of relevant parties accrued prior to termination. The clauses of this Agreement which expressly or by implication have effect after termination will continue to be enforceable notwithstanding termination.

### 3. **CONSENT PROJECT DOCUMENTS AND ACADEMY CONTRACTS**

#### 3.1 **Entering the Project Documents**

Without prejudice to the rights and obligations of the parties under or in connection with this Agreement the Company acknowledges that the Authority has entered into the Project Documents.

#### 3.2 **Compliance with Programme and Project Documents**

The Company shall not take any action or fail to take any action or (insofar as it is reasonably within its power) permit anything to occur which would cause the Authority to be in breach of its obligations under the Academy Contracts and the Project Documents.

#### 3.3 **Performance of Authority's Obligations**

The Authority owes obligations to the Provider under the Project Documents. To the extent that these obligations relate to the Academy the Authority undertakes to perform its obligations in a timely manner and acting reasonably and to consult with the Company and take due regard of any comments made by the Company.

#### 3.4 **Amendments to Project Documents**

3.4.1 Save as set out in clause 3.4.2 the Authority shall notify the DFE and the Company of any proposed changes to the Project Documents that:-

(a) may materially affect the operation of the Academy; and/or

(b) may result in additional costs for the Company ("**Proposed Material Changes**");

3.4.2 Any proposal for Authority Variations or Provider Variations under clause 58 of the Project Agreement shall be dealt with in accordance with Clause 26 and shall not constitute a Proposed Material Change;

3.4.3 The Authority shall consult with the Company and shall have due regard to any representations made by the Company in respect of the Proposed Material Changes. The Authority shall act reasonably in light of the Company's representations when deciding whether or not to continue with a Proposed Material Change;

3.4.4 The Authority shall as soon as reasonably practicable following any amendment described in Clause 3.4.1 and/or described in Clause 3.4.2 provide to the Company copies of each amended Project Document.

#### 3.5 **Copies of Project Documents**

The Authority has provided to the Company copies of each of the relevant Project Documents and the Company confirms that it has conducted its own analysis of the Information supplied to the Company or any of its nominees and advisers before the date of this Agreement.

### 3.6 **Due Diligence**

Neither the Authority, nor any of its agents servants or advisers shall be liable to the Company (whether in contract, tort or otherwise and whether or not arising out of any negligence on the part of the Authority or any of its agents, servants or advisers) in respect of any inadequacy of any kind whatsoever in the Information and except as provided in Clause 6.3 and Schedule 3 the Authority gives no warranty or undertaking that the Information represents all of the information in its possession or power relevant or material to the Project nor in respect of any failure to disclose or make available to the Company any information, documents or data or to keep the Information up to date or to inform the Company of any inaccuracy, error, omission, unfitness for purpose, defects or inadequacy in the Information.

### 3.7 **Information Share**

The parties and their representatives shall co-operate to share Information which may be relevant concerning the operation of the Academy without limitation:-

3.7.1 the parties shall comply with the Information Protocol;

3.7.2 under the terms of the Project Documents the Authority is required to provide certain Information to the Provider which is in the possession or control of the Company. The Company will provide such Information to the Authority within such time period as the Authority may reasonably require Without limitation to the foregoing the Company shall notify the Authority promptly in writing when it becomes aware of any of the following events:-

3.7.2.1 plans to erect any new structures on the Site (other than pursuant to the Project Documents);

3.7.2.2 any applications for planning consent for the Site;

3.7.2.3 not used; and

3.7.2.4 any contract for the purchase lease or licence of any ICT (including software) or equipment or ICT Services proposed to be entered into by the Company which impacts on the Services at the Academy.

3.8 The parties agree that where and to the extent that the Authority or the Company fails to supply or make available to the other (the "**Uninformed Party**") any information provided in accordance with Clause 3.7 or pursuant to the Information Protocol (an "**Information Default**") and this affects the Uninformed Party's ability to comply with any obligation provided in or discharge any liability in connection with this Agreement or gives rise to any additional or operates to increase any existing liability for the Uninformed Party under this Agreement, the Uninformed Party shall (subject to it taking all reasonable steps to mitigate the effects of such Information Default) be relieved of any such obligation and/or liability to the extent that reasonably reflects the impact of the relevant Information Default.

## 4. **ENFORCEMENT OF THE PROJECT AGREEMENT**

4.1 Where in relation to the Site:-

4.1.1 there is a breach of the Project Agreement by the Provider;

4.1.2 there is an act or omission of the Provider which entitles the Authority to make a claim under the Project Agreement;

4.1.3 there is damage to the Site that is the liability of the Provider under the Project Agreement;

4.1.4 a dispute arises under Clause 23 of this Agreement; and/or

- 4.1.5 the Company is a co-insured party under a Project Insurance and wishes to pursue a claim against insurers under a relevant Project Insurance,
- the Authority and the Company shall promptly liaise to consider whether and upon what basis the Authority should exercise any of the rights available to it under the Project Documents in respect of such breach, act or omission or whether and upon what basis the Company would intend to exercise its right to make a claim against a relevant Project Insurance (as the case may be) provided that with the exception of any claims which may prejudice the operation of clauses 62 to 64 of the Project Agreement nothing in this Clause 4 shall be construed as preventing the Company from making a claim under a relevant Project Insurance where it is a co-insured party.
- 4.2 If the Authority and the Company cannot reach agreement on an issue raised pursuant to Clause 4.1, DFE shall adjudicate promptly on that issue taking into account:-
- 4.2.1 any time period required to take action in accordance with the Project Agreement and relevant circumstances;
- 4.2.2 the views of both parties; and
- 4.2.3 any matter reasonably deemed relevant by DFE.
- 4.3 In the event that it is agreed by the parties or determined by DFE that:-
- 4.3.1 the Authority should exercise its rights and remedies in respect of the relevant breach, act or omission, the Authority shall promptly use its best endeavours to do so; or
- 4.3.2 a relevant party should pursue a claim against an insurer under a Project Insurance the relevant party shall (subject to any existing claim arrangements) endeavour to pursue such a claim.
- 4.4
- 4.4.1 The Authority shall use all reasonable endeavours to procure compliance by the Provider with its obligations under the Project Agreement for the benefit of the Academy and the Company;
- 4.4.2 Where in this Agreement the Authority purports to limit its liability to the Company to the equivalent benefit it receives under the Project Agreement (as appropriate) such limitation shall be subject always to the Authority complying with Clause 4.4.1;
- 4.4.3 In its monitoring of the Provider, the Authority shall have regard (so far as is reasonable and practicable to do so) to any matter that the Company (acting reasonably) considers should be enforced against the Provider pursuant to the Project Agreement provided that the Company shall notify the Authority of any such matters as soon as reasonably practicable.
- 4.5 **Payment of Claims Following Provider Default**
- 4.5.1 Subject to Clause 4.5.2 the Authority shall promptly pay to the Company any amounts it recovers under the Project Documents (which it is not obliged to pay out to the Provider pursuant to the terms of the Project Agreement) following a Provider Default to the extent they relate to the Academy;
- 4.5.2 Where the losses referred to in Clause 4.5.1 are suffered by the Company and the Authority arising from the same matter and the amount recovered does not cover the total losses incurred, the Authority shall only be liable to the Company under this Clause 4.5.2 for a proportionate amount of the amounts recovered taking into account the parties' respective claims. The Authority shall not be liable to the Company under this Clause 4.5 for any amounts in excess of those recovered pursuant to the Project Documents or in respect of amounts it is obliged to pay to the Provider under such Project Documents.

- 4.6 During the subsistence of the Project Agreement, the Authority shall provide to those pupils at the Academy from time to time entitled to free meals such free meals as a maintained school is required under Legislation from time to time in force to provide and the provisions of Clause 12A shall apply in respect of payment for the same. It is acknowledged that the Authority has delegated the provision of such meals to the Provider under the Project Agreement.
- 4.7 The Authority will hold for the benefit of the Company and will, where permitted to do so by the Project Documents if so required by the Company use reasonable endeavours to enforce in accordance with the terms thereof each Sub-Contractor's Direct Agreement to the extent that the protections afforded by each such Sub-Contractor's Direct Agreement relate to the Academy. The Company will indemnify the Authority for the proportion of its costs of taking such action as relates to the proportion of the benefit of enforcement of such Sub-Contractor's Direct Agreement accruing to the Company or which would have accrued to the Company had the Authority's action against the counterparty of the Sub-Contractor's Direct Agreement been successful.
- 4.8 The Company shall be entitled in any action or proceedings brought by the Authority in connection with this Agreement (which arises from a claim by the Provider against the Authority under the Project Agreement) to rely on any right in defence of liability available to the Authority in the Project Agreement and to raise an equivalent right in defence of liability (save for set off and counterclaim) as would be available to the Authority in the Project Agreement and to raise an equivalent right in defence of liability (save for set off and counterclaim) as would be available in connection with a similar course of action by the Provider against the Authority pursuant to the Project Agreement.
- 4.9 In the event of an Emergency to which clause 26 of the Project Agreement applies upon the request of the Company the Authority will instruct the Provider to use its best endeavours to procure that such additional or alternative services (of a similar nature to the Services) shall be undertaken by the Provider to ensure that the Emergency is dealt with and normal operation of the Academy resumes as soon as reasonably practicable and the Company will bear and pay any costs payable by the Authority to the Provider under clause 26 of the Project Agreement in those circumstances.

## 5. **COMPENSATION EVENTS AND RELIEF EVENTS**

5.1 If:-

5.1.1 either party has reason to believe that a Compensation Event has arisen whether the same is also a breach of this Agreement or otherwise or that a Relief Event has arisen; or

5.1.2 the Authority is notified by the Provider that circumstances constituting a Compensation Event whether the same is also a breach of this Agreement or otherwise or that a Relief Event has or may have arisen,

in either case having or with the potential to have an impact on the Academy then the parties shall promptly consult regarding circumstances that give rise to the claim or potential claim and shall discuss whether there has been or may have been a Compensation Event or Relief Event and shall meet frequently thereafter to review information received from the Provider in connection with the circumstances that give rise to any claim made by the Provider with a view to considering the evidence provided.

5.2 In the event that a claim is made by the Provider to which Clause 5.1 applies the Authority shall take due account of all information provided by the Company where the Company may be in whole or in part responsible for the circumstances that give rise to the Compensation Event and the Authority shall use all reasonable endeavours to resist such claim and to require mitigation of the claim where it ought reasonably to do so.

## 6. COMPANY ACKNOWLEDGEMENT UNDERTAKINGS AND WARRANTIES

### 6.1 The Company:

6.1.1 warrants and represents to the Authority that the information set out in Schedule 3 Part 1 (Corporate Warranties) is true and accurate in all respects; and

6.1.2 acknowledges that the Provider shall be entitled to provide the Services described in the Project Agreement at the Academy.

### 6.2 Authority Consents

The parties agree that in relation to the Project Agreement:-

6.2.1 the Authority shall not give any consent approval or authorisation of matters concerning the Academy without the prior operation of the procedures set out in this Clause 6.2;

6.2.2 the Authority shall inform the Company of the decision it requires by when and shall provide any relevant information at its disposal to inform such a decision following which the Company will give any consent approval or other necessary response in accordance with the timescales within which the Authority has advised it is required to act; and

6.2.3 where the Company:-

(a) does not respond to the Authority in accordance with Clause 6.2.2 the Authority has discharged all obligations under this Clause 6.2 in respect of the relevant consent, approval or authorisation and shall be entitled to give such consent, approval or authorisation; or

(b) does not give consent the Company will provide full written details of its objections to the Authority within such time period as the Authority has advised it is required to act to enable the Authority to comply with its obligations under the Project Documents;

6.2.4 Without prejudice to Clause 26.3.4 the Company shall not be required to give any consent or approval sought by the Authority under Clause 6 or otherwise and the Company may withhold or give such consent or approval in its absolute discretion save where the Authority can demonstrate that the failure to give such consent or approval would have the effect of increasing the Authority's liabilities under the Project Documents and/or have a material adverse effect on the Project;

6.2.5 Subject to Clause 6.2.4 the Authority shall not give any consent or approval to which this Clause 6 applies if the Company shall in accordance with this Clause 6 have notified the Authority that it is withholding its consent or approval.

6.3 The Authority warrants and represents that the information set out in Schedule 3 Part 2 is correct in all material respects.

6.4 Nothing in this Agreement shall be construed as a fetter or restriction on the exercise of the Authority's statutory functions and/or related rights including planning education or highways functions.

## 7. REPRESENTATIVES

7.1 The Authority shall from time to time appoint a representative to exercise the functions and powers of the Authority in relation to the performance of this Agreement notifying the Company and DFE promptly of the identity of the relevant person. The Authority shall be entitled from time to time to amend the identity of its appointed representative by notice in writing to the Company and to DFE.

7.2 The Company shall from time to time appoint a representative to exercise the functions and powers of the Company in relation to this Agreement notifying the Authority and DFE promptly of the identity of the relevant person. The Company shall be entitled from time to

time to amend the identity of its appointed representative by notice in writing to the Authority and to DFE.

## **8. GRANT OF LEASE**

8.1 The Authority shall and subject to schedule 4 (Grant of the Lease) grant and the Company shall accept a lease of the Site pursuant to the terms set out in schedule 4 (Lease) of this Agreement as and from the Commencement Date.

8.2 The Authority as Landlord has served on the Company as tenant a notice in relation to the Lease in the form set out in schedule 7 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("Order").

8.3 The Company (or a person duly authorised by the Company) has made a statutory declaration in the form or substantially in the form set out in paragraph 8 of schedule 2 to the Order.

8.4 The Authority and the Company agree that the provisions of sections 24 to 28 of the 1954 Act be excluded in relation to the Lease.

8.5 The Company is not entitled to any compensation under section 37 of the 1954 Act when the Lease ends.

### **8.7 Authority and Provider to Enter School Premises**

The Company acknowledges that the Lease remains subject to the licence granted to the Provider under the Project Agreement and acknowledges that the Authority, Authority Related Parties, the Provider and Provider Related Parties have sufficient authority to enter the Site from time to time for the purpose of carrying out their obligations under the Project Documents and shall not withhold such access.

8.8 The Company shall procure that in occupying the Site there shall be no act or omission by the Company or Company Related Parties which shall give rise to a right for any person to obtain title to or any right or interest over the Site or any part of it and/or cause any material disruption to the provision of the Works (if any) and/or the Services.

## **9. COMPANY ASSETS**

9.1 The Company is entitled to use its own equipment and assets so as to facilitate the provision of education services by the Company at the Academy.

9.2 The Company acknowledges that Company Assets are and shall remain the responsibility of the Company and the Services provided by the Provider do not (unless otherwise agreed in writing by the Authority after receiving consent from the Provider) extend to any of the Company Assets.

9.3 The Company is responsible for any costs incurred by the Company in relation to the Company Assets.

9.4 For the avoidance of doubt the Existing School and any fixtures fittings or equipment provided under the Project Documents or in respect of which the Authority is the legal or beneficial owner shall (unless transferred in accordance with Clause 9.5) remain owned by the Authority.

9.5 Immediately upon termination or expiry of the Project Agreement (howsoever arising) if the Company shall at that time be operating the Academy the Authority shall transfer or procure the transfer to the Company of the PFI Provider Assets (at no cost to the Company).

## 10. FIRE REGULATIONS

The Company and Authority shall each act reasonably and in good faith to procure that an up to date fire folder is maintained for the Academy in accordance with the government guidance referring to the Fire Precautions Workplace Regulations 1997 amended 1999. In particular the Company shall:-

- 10.1.1 prepare risk assessments for emergency events including fires;
- 10.1.2 prepare and communicate the evacuation procedures including instruction to staff and pupils at the Academy on the correct action when discovering a fire and on the correct action when the fire alarm is sounded;
- 10.1.3 prepare notices/signs reinforcing the evacuation procedures; and
- 10.1.4 ensure and maintain discipline of occupants of the Academy to prevent fires and deliberate and/or accidental activation of the system.

## 11. PLANNED MAINTENANCE

- 11.1 Where the Provider proposes to carry out the Maintenance Programme which may impact on the Educational Services at the Academy the Authority will not authorise the carrying out of such maintenance by the Provider without prior consultation with the Company Representative (and the Authority shall have due regard to any representations made) Where the Maintenance Programme would if implemented have a material and adverse effect on the Educational Services at the Academy the Authority will not authorise the carrying out of such maintenance without the prior consent of the Company.
- 11.2 The Authority shall provide the Company with a copy of the Provider's Maintenance Programme (insofar as it relates to the Academy) in each year of this Agreement. The Authority shall act reasonably and shall take the Company's comments on the Maintenance Programme into account when making submissions to the Provider. Without prejudice to the generality of the foregoing:-
  - 11.2.1 the Company shall be entitled to raise comments on the Maintenance Programme and the Authority shall act reasonably and shall take the Company's comments on the Maintenance Programme into account when making submissions to the Provider in respect of the Maintenance Programme under clause 24.4.1 of the Project Agreement; and
  - 11.2.2 the Company shall at any time be entitled to request that the Authority require the Provider to accelerate or defer any Programmed Maintenance as an Authority Change in accordance with Clause 26 provided that the Company acknowledges that the Authority has no absolute right under the Project Agreement to require the acceleration or deferral of such maintenance;
  - 11.2.3 where the Maintenance Programme contains proposals which would if implemented have a material and adverse effect on the Educational Services at the Academy the Authority shall make submissions to the Provider for variations to be made to the Maintenance Programme as reasonably requested by the Company.

## 12. PAYMENT OF CONTRIBUTION

### 12.1 Contribution

In consideration for the provision of the Services to the Academy the Company shall with effect from the Commencement Date pay to the Authority the Relevant Proportion (as adjusted from time to time) in monthly instalments on each Payment Date occurring after the commencement of this Agreement.

### 12.1A Affordability Gap

The Company undertakes to pay to the Authority in addition to the Relevant Proportion due under clause 12.1, any sum received by it from the Secretary of State for Education or his agent in respect of the Affordability Gap (as defined in the Principal Agreement) whether received as part of General Annual Grant or as an Earmarked Annual Grant. The Company shall make such payment to the Authority at the same time as the DFE is required to pay the DSG for the relevant year to the Authority.

## 12.2 **VAT**

If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply (the "**Recipient**") shall in addition pay the person making the supply (the "**Supplier**") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

## 12.3 **Adjustment for Part Years**

Where:

- 12.3.1 this Agreement commences part way through the accounting year (being each year commencing 1 April or as otherwise agreed); or
- 12.3.2 this Agreement and/or the Project Agreement is terminated or expires part way through the accounting year,

then the amount to be paid by the Company in respect of that year will be adjusted pro rata by reference to the number of days in that year in which services are provided under the Project Agreement as the case may be compared to the number of days in that year and in the case of Clause 12.3.2 the Authority shall repay the Company any excess paid to the Authority by the Company within twenty (20) Business Days of such termination.

## 12.4 **Flooding**

For the avoidance of doubt this Agreement will continue in full force and effect notwithstanding that DFE may have exercised its powers under the Articles of Association to require the appointment of additional members of the local governing body of the Academy.

## 12.5 Utilities

12.5.1 The Company acknowledges that in accordance with the terms of schedule 4 (Payment Mechanism) of the Project Agreement the Unitary Charge contains the costs of supply of heating fuels, gas, water, sewerage and electricity consumed at the Academy and that the Authority is responsible for payment of the Unitary Charge until expiry or earlier termination of and subject to the terms of the Project Agreement and that the Unitary Charge is adjusted depending on the volume of utilities consumed and the price of such utilities.

### 12.5.2

12.5.2.1 To the extent that in any month there is a Company Utilities Payment, the Company shall make an adjustment to the next instalment of the Relevant Proportion of the amount of the Company Utilities Payment to ensure that the Authority is left in a no better and no worse position as a result of the Company Utilities Payment.

12.5.2.2 To the extent that in any month there is a Company Utilities Saving then the Company shall make an adjustment to the next instalment of the Relevant Proportion of the amount of the Companies Utilities Saving to the credit of the Company .

12.5.2.3 To the extent the Authority has any increased liability for costs pursuant to Part 8 of Schedule 4 of the Project Agreement (Payment Mechanism) then the Company shall make an adjustment to the Relevant Proportion to ensure that the Authority is left in a no better and no worse position as a result.

12.5.2.4 To the extent that the Authority has the benefit of a saving pursuant to Part 8 of Schedule 4 of the Project Agreement (Payment Mechanism) then the Company shall make an adjustment to the Relevant Proportion of the amount of such saving to the credit of the Company .

12.5.3 Following the expiry or earlier termination of the Project Agreement, the Company shall be responsible for procuring and maintaining the supply of relevant utilities consumed on the Site necessary to operate the Academy and the Site.

## 12.6 Interest on Late Payment

Save where otherwise specifically provided where any payment or sum of money due from one party to another party under any provision of this Agreement is not paid on or before the due date it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the parties that the Prescribed Rate provides a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

## 12.7 Adjustment of Contribution

12.7.1 Subject to Clause 12.7.2, the Relevant Proportion shall be adjusted for the following pass through costs as set out below:-

12.7.1.1 not used

12.7.1.2 on the occurrence of the circumstances referred to in Clause 12.5.2 of this Agreement (Utilities),

12.7.1.3 on the occurrence of the circumstances referred to in Clause 16.5 of this Agreement (Sharing of Insurance Cost Differentials);

12.7.1.4 on the occurrence of the circumstances referred to in Clause 18 of this Agreement (Benchmarking and Market Testing);

12.7.1.4 on the occurrence of the circumstances referred to in Clause 26.3 of this Agreement (Payment for Variations);

12.7.1.5 on the occurrence of the circumstances referred to in Clause 26A of this Agreement (Change in Law);

and otherwise as specifically provided for elsewhere in this Agreement;

12.7.2 Where the Relevant Proportion is to be adjusted in accordance with the terms of this Agreement (subject always to any provisions in this Agreement specifying the manner or basis of the relevant adjustment) the adjustment shall be proportionate having regard to all relevant matters including but not limited to:-

12.7.2.1 any change to the Unitary Charge;

12.7.2.2 the proportion of the Unitary Charge represented by the Relevant Proportion;

12.7.2.3 the effect on the Academy and the Company;

12.7.2.4 the effect on the Authority,

and shall be reasonable in all the circumstances.

## 12A **CATERING AND NNDR**

12A.1 The Company requests and authorises the Authority to procure that the Provider shall act as the agent for the [Academy] for the purpose of serving school meals to Category A Consumers Category B Consumers and Category C Consumers pursuant to Part 9 of Schedule 4 of the Project Agreement.

12A.2 The Authority shall supply to the Company on a monthly basis evidence of the number of Free School Meals served at the Academy in the preceding month and which the Authority is liable for under the Project Agreement. The Company shall be liable to pay to the Authority all amounts required to discharge such liability within five (5) Business Days of receipt of such evidence.

12A.3 The Company shall be directly liable to the relevant authority for National Non Domestic Rates.

## 13. **PERFORMANCE REGIME**

### 13.1 **Deductions**

The Authority is entitled under the Project Documents to inter alia make Deductions. The provisions of this Clause 13 shall apply to the administration of and accounting for such Deductions in respect of the Academy. The Authority shall make reasonable endeavours to pursue Deductions which may be available under the Project Documents.

### 13.2 **Reporting**

The Company shall procure that the principal of the Academy (or a person authorised by the Company) shall in relation to the Academy:-

13.2.1 use the Helpdesk established under the Project Agreement to report any service failures eligible for Deductions;

13.2.2 promptly report any apparent Unavailability of relevant areas to the Helpdesk in relation to the Project Agreement and to the Authority's Representative;

13.2.3 promptly review any report of the performance of the Provider provided by the Authority and promptly notify any inaccuracies relating to the Academy to the Authority's Representative; and

13.2.4 promptly report and notify to the Authority's Representative any acts or omissions of the Provider which the Company believes may reasonably constitute a breach by the Provider of the Project Agreement.

### 13.3 **Attribution of Deductions**

13.3.1 Any deductions made by the Authority pursuant to the Project Agreement solely in relation to the Academy shall be credited to the Company as a proportional reduction of monthly instalments of the Relevant Proportion pursuant to Schedule 2 (Calculation of the Company's Contribution).

## 14. **SURVEYS**

14.1 The Authority and the Company shall liaise throughout the term of this Agreement on matters relating to the condition of the buildings and any other structures, cabling services and of the grounds which comprise the Site.

14.2 The Authority in exercising its rights to survey the Site and buildings on the Site under the Project Agreement shall liaise with the Company Representative and shall have regard to the views of the Company in setting times for a surveyor to assist the Authority in the undertaking of any such survey.

14.3 In the event that the Company requests the Authority to exercise its rights to survey the Academy under clause 24.2 of the Project Agreement and the outcome of such survey results in the Authority being responsible for the costs of the survey, then the Company shall reimburse the costs of such survey to the Authority within five Business Days of receipt of evidence of the costs payable by the Authority.

## 15. **INDEMNITIES**

Where any party (the "**Indemnified Party**") wishes to make a claim under this Agreement against the other (the "**Indemnifying Party**") whether in relation to a claim made against it by a third party (a "**Third Party Claim**") or otherwise then any and all claims by the Indemnified Party shall be made in accordance with clause 4 of the Principal Agreement.

## 16. **INSURANCE**

16.1 The Company acknowledges that it is responsible for procuring and maintaining insurances which:-

16.1.1 cover the risk of any and all damages losses claims actions costs expenses proceedings demands charges physical loss theft and/or indirect loss to the Company and Company Assets; and

16.1.2 are otherwise required by Legislation in relation to risks relevant to the operation of the Academy and the provision of Educational Services at the Academy.

### 16.2 **Company Insurance Requirements**

The Company shall not take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any Project Insurance to which it is an insured a co-insured or an additional insured person or noted on the policy.

### 16.3 **Authority Insurance Obligations**

The Authority shall use all reasonable endeavours to procure due compliance by the Provider of its obligations under clause 62 (Insurance) of the Project Agreement to procure the existence of insurances and shall in particular procure that such insurances:-

- 16.3.1 where requested by the Company name the Company as co insureds; and
- 16.3.2 where the Company is co insured include within the terms of such insurances:
  - 16.3.2.1 non vitiation protection; and
  - 16.3.2.2 a waiver of subrogation rights (except in the event of the Company, its employees and agents having caused or contributed to the occurrence or claim through committing fraud, deliberate misrepresentation, deliberate non disclosure or breach of a material policy condition); and
- 16.3.3 are in terms that comply with the other provisions of clause 62 (Insurance) of the Project Agreement;

and shall exercise its rights and/or remedies under the Project Agreement to such ends.

### 16.4 **Evidence of Policies**

The Authority shall provide to the Company on reasonable notice:-

- 16.4.1 copies of the material damage insurance policy relating to the Site; and
- 16.4.2 evidence that the premiums payable under the insurances referred to in Clause 16.3 have been paid and that the insurances are in full force and effect in accordance with clause 62 of the Project Agreement.
- 16.4A Without prejudice to Clause 16.3, the Authority shall forward to the Company copies of any renewal policy received from the Provider pursuant to clause 62.5 of the Project Agreement.

### 16.5 **Sharing of Insurance Cost Differentials**

If pursuant to clause 88.2 or 92 of Part 4 of Schedule 9 of the Project Agreement it is agreed or determined that the Authority is responsible for meeting the costs of insurance policy premium variations:-

- 16.5.1 the Authority shall forthwith notify the Company of the same;
- 16.5.2 the Company shall make an appropriate adjustment to the Relevant Proportion to ensure the Authority is in no better and no worse position than before the premium variation occurred within ten (10) Business Days of receipt of notice; and
- 16.5.3 on the next immediate and subsequent Payment Date payments of the Relevant Proportion shall be adjusted so as to ensure the Authority is in no better and no worse position than before the premium variation occurred.
- 16.6 If pursuant to clause 88.3 of Part 4 of Schedule 9 of the Project Agreement it is agreed or determined that the Authority is to receive the benefit of any insurance policy premium variations:-

- 16.6.1 the Authority shall forthwith notify the Company of the same;
- 16.6.2 the Company shall make an appropriate adjustment to the Relevant Proportion to reflect the benefit of any insurance policy premium variation within ten (10) Business Days of receipt of notice.

16.6.3 On the next immediate and subsequent Payment Date payments of the Relevant Proportion shall be adjusted to reflect the benefit of any insurance policy premium variation in accordance with clause 16.6.2 to the credit of the Company

## **17. DAMAGE AND VANDALISM**

### **17.1 Reporting of Damage**

Under the terms of clause 61.10 (Procedure following discovery of damage) of the Project Agreement the Provider has agreed that it shall as soon as practicable inform the Company of the discovery of any damage to any part of the Site or any furniture fittings and equipment within the Academy. The Company shall co operate with the Provider at all times in the performance by the Provider of its obligations to identify and report any damage.

### **17.2 Authority Damage to the Facility**

17.2.1 In order to facilitate the Provider's responsibility to report damage on a timely basis (which in turn will facilitate the correct allocation of responsibility under the Project Agreement as between the Authority and the Provider) the Company shall procure that the Company Representative and the principal co operate with the Provider in agreeing whether or not any damage is Qualifying Vandalism (under the Project Agreement) and that the Provider is kept informed of the principal's alternate as required by clause 61.10.1 of the Project Agreement.

17.2.2 Any Qualifying Vandalism which is occasioned by the Company and/or Company Related Parties shall (except to the extent covered by any relevant Project Insurance) be the responsibility of the Company to the extent it is the responsibility of the Authority under the Project Agreement.

17.2.3 The Company shall reimburse the Authority for any damages, costs, claims, liabilities and/or expenses properly incurred by the Authority, Provider or any Provider Related Parties arising from such Qualifying Vandalism within ten (10) Business Days of receipt of an invoice for the same from the Authority (including, for the avoidance of doubt, any increases in excess or deductible which occurs as a direct result of claims made under the Project Insurances due to Qualifying Vandalism).

## **18. BENCHMARKING AND MARKET TESTING**

18.1 In exercising its rights pursuant to clause 28 (Market Testing and Benchmarking) of the Project Agreement the Authority shall consult with the Company Representative and all matters affecting the Academy which arise pursuant to any benchmarking or market testing exercise shall so far as is compatible with the programme for the undertaking of the benchmarking exercise and any subsequent market testing be referred to the School Liaison Procedure for consideration.

18.2 Where, as a result of the benchmarking and market testing procedures referred to in Clause 18.1, there is an adjustment to the Unitary Charge, the Relevant Proportion paid by the Company shall be adjusted to take account of the outcome of the benchmarking and market testing procedures so that any such adjustment of the Relevant Proportion coincides with an adjustment of the Unitary Charge pursuant to clause 28 of the Project Agreement and leaves the Authority in a no better and no worse position than before the benchmarking and market testing procedures were undertaken in accordance with the Project Agreement.

18.3 Where as a result of the benchmarking and market testing procedures under clause 28A of the Project Agreement there is an adjustment to the Unitary Charge or the Minimum Net Income the Relevant Proportion paid by the Company shall not be adjusted to take account of the outcome of such benchmarking and market testing procedures

19. **CONSULTATION AND LIAISON**

The Authority shall convene a meeting of the School Liaison Committee in accordance with the procedures provided for in Schedule 1 no less frequently than quarterly.

20. **USE AND CONTROL OF THE SCHOOL**

20.1 The Company acknowledges that pursuant to the Project Agreement and this Agreement:

20.1.1 variations to a School Day and Additional Sessions may be agreed between the Authority and the Provider which may involve the operation of the change procedure under the Project Agreement and additional costs incurred by the Company;

20.1.2 the Existing School is entitled to a maximum of 200 hours of Community Use in aggregate per Academic Year without incurring additional costs. The Company shall be entitled to 100 of such hours provided that the Company's use of the Academy for Community Use is subject to any existing arrangements for Community Use as at the date of this Agreement. Particulars of such use are set out at schedule 20 of the Project Agreement.

20.1.3 variations to the Community Use allocated hours may be agreed by the Authority and the Provider which may involve the operation of the change procedure under the Project Agreement and additional cost to the Company;

20.1.4 the Authority does not have the right to levy deductions under the Payment Mechanism set out in schedule 4 of the Project Agreement in relation to the Provider's obligation to provide access for Community Use;

20.1.5 the Company's use of the Academy for Community Use is subject to any existing arrangements for Third Party Use as at the date of this Agreement, particulars of which are set out at Schedule 6;

20.1.6 the Existing School is entitled to a maximum of 200 hours for Additional Sessions per Academic Year without incurring additional costs. The Company shall be entitled to 200 of such hours for Additional Sessions provided that the Company's use of the Academy for Additional Sessions is subject to any existing arrangements for Community Use set out in Schedule 20 of the Project Assessment and Third Party Use as set out in Schedule 6.

20.2 Outside of the above periods the Provider is entitled to require the Site and any facilities on the Site (other than Company Assets equipment or consumables owned by the Company or for which it is responsible which are not provided under the Project Agreement) for purposes of third party income generation in accordance with clause 29 of the Project Agreement.

20.2A In the event that the Authority incurs a liability to the Provider under clause 29.7.7 of the Project Agreement arising out of the Community Use entitlement of the Company as a result of:

(i) the Company not attending a Community Use session without having given the period of notice advised to it ( which the Company acknowledges will cause the Provider to incur abortive costs) or

(ii) the Company not paying any fees owing to the Provider or the Extended Use Contractor in respect of a Community Use session

the Company shall reimburse the amount of such liability to the Authority within five (5) Business Days of receipt of evidence of the same :

## 20.3 **Requests for School Periods**

20.3.1 The Company shall notify the Authority as follows in relation to Additional Sessions, Terms and Community Use:-

- (a) the Company shall notify the Authority no less than twenty (20) Business Days prior to the last day of each Academic Year of any proposed Additional Sessions for the following Academic Year;
- (b) in relation to Additional Sessions not notified to the Authority pursuant to (a) above as soon as is reasonably practicable and at least four (4) months in advance of each proposed Additional Session together with details of the intended use, the dates and times of such use the areas of the Academy and Services to be provided;
- (c) **Terms**

No later than 28th February in each year the Company shall notify the Authority of the dates for Terms (including any half-term holidays) in the period 1st September to 31st August following that notice. The Company acknowledges the importance to the Authority of the dates for and length of Terms and half term holidays. Where the Company requires Terms to have an aggregate yearly duration in excess of 195 days or where the Company requires a variation in the number of Terms it shall propose an Authority Change pursuant to this Agreement. For the purposes of the year ending 31 August 2013 the Terms will be as follows:-

Autumn Term: Tuesday 4<sup>th</sup> September 2012 to Friday 21<sup>st</sup> December 2012

Spring Term: Monday 7<sup>th</sup> January 2013 to Thursday 28<sup>th</sup> March 2013

Summer Term: Monday 15<sup>th</sup> April 2013 to Tuesday 23<sup>rd</sup> July 2013

- (c) **Community Use**

- (i) In the event that the Company requires its Community Use of the Academy to be increased which results in the Community Use to have an aggregate duration in each School Year in excess of 200 hours it shall propose an Authority Change pursuant to this Agreement.
- (ii) Unless the parties agree in accordance with the terms of this Agreement and further the Provider and the Authority agree in accordance with terms of the Project Agreement Community Use for the Academy may not exceed 100 hours in aggregate in any School Year.

## 21. **AUTHORITY INDEMNITY**

### 21.1 **Indemnity for acts or omissions of the Contractor**

The Authority shall be responsible for and shall release and indemnify the Company, in respect of all Project Document Losses suffered or incurred by the Company or any servant, agent or representative of the Company to the extent that either:

21.1.1 the Authority recovers such Project Document Losses from the Contractor; or

21.1.2 the Authority would have been entitled to recover such Project Document Losses under the provisions of the Project Agreement save for failures by the Authority to perform its obligations under this Agreement;

whichever is the larger amount.

### 21.2 **Indemnity for acts or omissions of the Authority and Authority Related Parties**

The Authority shall, subject to clause 21.4 (Authority not Responsible), be responsible for, and shall release and indemnify the Company or any Company Related Party on demand from and against all liability for Academy Direct Losses arising from:

21.2.1 death or personal injury;

21.2.2 loss of or damage to property (including property belonging to the Company or for which it is responsible) but excluding the, land, buildings, plant, equipment and other assets which are the responsibility of the Contractor to provide under the Project Agreement and which form part of the Academy; and

21.2.3 third party actions, claims and/or demands (other than any which are the subject of the indemnity in clause 21.3) brought against the Company or any Company Related Party,

which may arise out of, or in consequence of the performance or non-performance by the Authority of its obligations under this Agreement or the presence on the Site of the Authority or any Authority Related Party.

21.3 The Authority shall, subject to clause 21.4 (Authority not Responsible), be responsible for, and shall release and indemnify the Company or any Company Related Party, on demand from and against all liability for Academy Direct Losses and Indirect Losses arising from third party actions, claims or demands (as described in clause 21.2.3) brought against the Company or any Company Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Authority of its obligations under this Agreement to the extent that there are no other remedies available to the Company under this Agreement.

#### 21.4 **Authority not Responsible**

The Authority shall not be responsible or be obliged to indemnify the Company:

21.4.1 for any matter referred to in clause 21.2 or 21.3 that arises as a direct result of the Authority acting on a written notice issued by the Company:

21.4.2 for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Company or any Company Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Authority of its obligations under this Agreement) or by the breach of the Company of its obligations under this Agreement; or

21.4.3 to the extent that any cost and expense related to any injury, loss or damage, is the responsibility of the Company pursuant to clause 17 (Damage).

#### 21.5 **Authority Compensation**

Without prejudice to any rights of the Company at common law or in equity, where the Company suffers or incurs Academy Direct Losses or Indirect Losses in connection with a breach by the Authority or an Authority Related Party of the Project Agreement and/or this Agreement or any other liability attributable to the Authority or the Authority Related Party under the Project Agreement or the negligence or wilful misconduct of the Authority or an Authority Related Party, and the indemnities contained in clauses 21.1 to 21.4 (inclusive) do not apply, the Authority shall compensate the Company for all such Academy Direct Losses and Indirect Losses.

## **22. ADDITIONAL INCOME**

### **22.1 Income Calculation**

The Company shall provide all reasonable assistance to the Authority where in accordance with clause 29.10 of the Project Agreement the Authority and Provider seek to agree the Net Income generated from use of the Academy through Third Party Use or Community Use.

### **22.2 Third Party Use – Approval**

The Authority hereby agrees with the Company that where the Company reasonably believes that Third Party Use is not compatible with the use of the Academy for Educational Services the Authority shall at the request of the Company exercise its powers to regulate the use of the Academy under the terms of clause 29.4 of the Project Agreement.

### **22.3 Existing School Responsibility**

For the avoidance of doubt the Company acknowledges that until the Company has taken occupation of the Academy pursuant to the Lease control of the Existing School remains with the Authority.

### **22.4 Income Share**

Any income relating to the Site payable to the Authority under Clause 29.10.5(a) of the Project Agreement shall not be credited to the Company.

## **23. DISPUTE RESOLUTION**

### **23.1 Dispute Resolution Procedure**

Where the Company does not believe that the Provider is undertaking its obligations in accordance with the requirements of the Project Agreement insofar as they relate to the Academy, the Company may (acting reasonably) request the Authority to consider in accordance with Clause 4 whether to submit such a dispute to the Dispute Resolution Procedure contained in the Project Agreement on behalf of the Company. The Authority shall act reasonably when considering any such request.

23.2 If a dispute arises in relation to any aspect of this Agreement the Company and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter. If the Authority and the Company fail to resolve the dispute within ten (10) Business Days of the initial consultation between them then either may refer the matter to be resolved by a person nominated by or on behalf of DFE. DFE shall act reasonably in making such nomination including ensuring the impartiality of the nominee regardless of whether there may be any financial benefit to DFE dependant on the nominee's decision. Subject to a decision made by a person nominated by or on behalf of DFE under this Clause each party shall in relation to the Project Agreement bear their own costs arising from a dispute pursuant to this Clause 23.2.

23.3 Should a dispute arise which the Authority would not otherwise pursue other than at the Company's request, the Company shall reimburse the Authority in relation to all reasonable and proper costs incurred by the Authority in submitting the matter to the relevant adjudicator pursuant to the Project Agreement.

## **24. EMPLOYEES**

24.1 Without prejudice to clause 4 the Authority undertakes to duly enforce the provisions of Clause 31 (Employees) of the Project Agreement for the benefit of the Company where requested to do so by the Company (acting reasonably).

24.2 In the event that the Company becomes aware of a breach by the Provider of any obligations under Clause 31 (Employees) of the Project Agreement the Company shall give notice (including reasonable particulars of the alleged breach) to the Authority and the Authority undertakes to promptly take up such matter with the Provider enforcing the terms of the relevant clause to the maximum extent practicable in the circumstances.

24.3 Where the Company considers that any person employed at the Academy (whether in connection with the Works or Services or otherwise) should be removed pursuant to the power available to the Authority under the Project Agreement the Company shall be entitled to serve written notice on the Authority requiring the Authority to exercise its power to procure removal of that person from the Site and the Authority shall promptly do so provided that in the event that the Authority is required to indemnify the Provider pursuant to clause 31.7 of the Project Agreement as a result of such removal, the Company shall indemnify the Authority so that the Authority is in a position no better and no worse provided that the Authority has acted in accordance with the Company's request.

## 25. **EMPLOYEE TRANSFERS**

The parties shall co-operate and consult with relevant employees as required under TUPE so that the parties may comply with their respective obligations under TUPE in connection with the Project and obligations in the Academy Contracts.

## 26. **EXERCISE OF AUTHORITY CHANGE AND CHANGE MECHANISM**

### 26.1 **Changes Not Proposed by the Company**

Where there is any proposal for a Variation under the Project Agreement that is not proposed by the Company:-

26.1.1 the Authority shall notify the Company and the DFE of all relevant information in relation to the proposed Variation including without limitation, the Authority's opinion, the available options, the decision required and time periods for both parties to respond; and

26.1.2 the Authority shall not agree to any proposed Variation which is reasonably likely to have an adverse effect upon the provision of the Services at the Academy or a material adverse financial impact on the Academy without the prior consent of:-

(a) the Company (which shall not be unreasonably withheld or delayed); or

(b) DFE in the event that either:-

(i) the Company has not provided its consent under Clause 26.1.3(a); or

(ii) the proposed Variation would have a material adverse financial impact on the Academy.

### 26.2 **Changes Proposed by the Company**

26.2.1 The Company may at its own cost acting reasonably request the Authority to request an Authority Variation pursuant to the Project Agreement and shall provide the Authority and DFE with all relevant information in relation to the proposed Authority Variation including so far as it is able all matters set out in clause 58 of the Project Agreement

26.2.2 The Authority may decline to submit an Authority Notice of Variation to the Provider where, if to put forward such a proposed Authority Variation to the Provider would:-

(a) be prejudicial to the Project as a whole ;

(b) Not Used;

- (c) be in breach of the requirements for Authority Variation set out in clause 58 of the Project Agreement;
- (d) result in material additional costs or increased liabilities for the Authority in a manner not adequately compensated for by either the Company and/or DFE; and/or
- (e) not be in the format of an Authority Notice of Variation as required by clause 58 of the Project Agreement.

26.2.3 Where the Authority does not decline the Company's proposed Authority Change pursuant to Clause 26.2.3:-

- (a) the Authority shall submit an Authority Notice of Variation to the Provider as soon as practicable and keep the Company informed as to any information regarding the proposed Authority Variation received from the Provider as well as any revisions, estimates and/or amendments to that proposed Authority Variation;
- (b) the Company shall, at its own cost, provide all assistance to the Authority including procuring additional information to assist the proposed Authority Variation details of proposals for provision of funding for capital expenditure required to implement the Authority Change, attending relevant discussions with the Provider in seeking to agree the contents of the Estimate provided by the Provider in accordance with clause 58 of the Project Agreement;
- (c) the Authority shall promptly provide the Company with a copy of the Estimate (as defined in the Project Agreement) relevant to the Authority Variation (including any revisions to such Estimate) and a copy of the proposed notice confirming the Authority Variation;
- (d) the Company shall provide written notice to the Authority either confirming the relevant Estimate or requesting the Authority withdraw the relevant Authority Notice of Variation within at least ten (10) Business Days before the Authority is required to advise the Provider that either the contents of the relevant Estimate are agreed by the Authority or the Authority Notice of Variation is withdrawn in accordance with clause 58 of the Project Agreement;
- (e) subject to Clause 26.3.4 the Authority shall not confirm with the Provider any Estimate in relation to an Authority Notice of Variation requested by the Company under this Clause 26.2 without the prior written consent of the Company (not to be unreasonably withheld or delayed); and
- (f) subject to Clause 26.3.4 the Authority shall not withdraw an Authority Notice of Variation requested by the Company under this Clause 26.2 without the prior written consent of the Company (not to be unreasonably withheld or delayed).

### 26.3 **Payment for Variations**

Where any Variation is likely to lead to an adjustment of the Unitary Charge or any payments from the Authority to the Provider of a lump sum:-

26.3.1 where pursuant to Clause 26.2 there is an increase in payments from the Authority to the Provider or the payment to the Provider of a lump sum arising from the implementation of an Authority Notice of Variation requested by the Company, the Company shall, unless agreed otherwise, in writing by the parties, bear the entire increase or reimburse the full amount of the lump sum to the Authority to the extent related to the Company's request;

- 26.3.2 where pursuant to Clause 26.1 there is an increase in payments from the Authority to the Provider or the payment to the Provider of a lump sum arising from the implementation of a Variation under the Project Agreement the Company shall unless agreed otherwise in writing between the parties pay to the Authority such proportion of the Authority's increased liability which relates to the Academy through either:-
- (a) a contribution to payment of a lump sum payable by the Authority to the Provider in relation to the Variation; or
  - (b) an adjustment to the Relevant Proportion,
- so as to ensure the Authority is left in no better and no worse position than if the Variation had not been implemented;
- 26.3.3 where pursuant to either Clause 26.1 or Clause 26.2 there is a decrease in payments from the Authority to the Provider arising from the implementation of the Variation, a proportionate adjustment to the Relevant Proportion to reflect such decrease shall apply as soon as reasonably practicable following the implementation of the relevant Authority Variation so as to ensure the Authority is left in no better and no worse position than if the Variation had not been implemented; and
- 26.3.4 notwithstanding Clause 26.1 and Clause 26.2, where the Company has not responded to the Authority within the time periods reasonably required by the Authority, the Authority may after giving reasonable warning proceed to exercise its rights and/or satisfy its obligations in the Project Documents in relation to the proposed Variation and any decision made by the Authority in respect of such Variation shall be deemed to be approved by the parties pursuant to this Clause 26.

#### 26A. **CHANGE IN LAW**

- 26A.1 The Authority shall promptly notify the Company and the DFE where it becomes aware of any Qualifying Change in Law which may affect the Academy or any part of it and provide all relevant details, to the extent available.
- 26A.2 The Authority shall promptly provide to the Company any information which it receives in relation to a Qualifying Change in Law.
- 26A.3 The Authority shall consult with the Company and DfE in respect of any Qualifying Change in Law and have regard to any representations made by the Company.
- 26A.4 Subject to the Authority complying with clauses 26A.1 to 26A.3 (inclusive), in the event that the Authority has a liability for a Qualifying Change in Law pursuant to clause 57 of the Project Agreement and the Authority has acted reasonably in disputing such liability (where appropriate), then:
- (a) where the Authority's liability under the Project Agreement consists of an adjustment to the Unitary Charge, the Relevant Proportion shall be adjusted so as to ensure that the Authority is left in a no better and no worse position than if the Qualifying Change in Law had not been implemented; or
  - (b) where the Authority's liability under the Project Agreement consists of a contribution to the payment of a lump sum pursuant to clause 57.4 of the Project Agreement, the Company shall pay the Authority such lump sum on or before the date falling 15 Business Days after the Capital Expenditure has been incurred by the Provider.
- 26A.6 Where there is a decrease in payments from the Authority to the Contractor arising from the implementation of any Qualifying Change in Law, a proportionate adjustment to the Relevant Proportion to reflect such decrease shall apply as soon as reasonably practicable following the implementation of the relevant Qualifying Change in Law so as to ensure the Authority is left in no better and no worse position than if the Qualifying Change in Law had not been implemented.

## 27. **TERMINATION**

### 27.1 **Occurrence**

This Agreement shall terminate on the earlier of the:-

- 27.1.1 expiry or termination of the Project Agreement; or
- 27.1.2 closure of the Academy; or
- 27.1.3 termination of the Funding Agreement save where this Agreement is to be or has been novated to a suitable replacement sponsor pursuant to the terms of the Principal Agreement; or
- 27.1.4 termination of the Lease pursuant to the provisions thereof.

## 28. **ASSIGNMENT ETC**

- 28.1. In the event that the Authority novates assigns or otherwise transfers its rights and obligations under the Project Agreement to another person then the Authority will novate this Agreement and the Lease to that party.
- 28.2. Notwithstanding Clause 28.1 this Agreement and the Lease may be novated in accordance with the terms of the Principal Agreement.
- 28.3. Subject to Clauses 28.1 and 28.2 no party shall otherwise novate, assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

## 29. **GOVERNING LAW**

### 29.1 **Applicable Law**

This Agreement and any non-contractual obligation arising out of it is subject to the laws of England and Wales.

### 29.2 **Jurisdiction**

Except as provided in this agreement the parties agree that any disputes between the parties shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## 30. **THIRD PARTY RIGHTS**

### 30.1 **Entitlement of Third Parties**

No term of this Agreement is intended to give any entitlement as against any party to any person who is not a party to this Agreement.

### 30.2 **Exclusion of Contracts (Rights of Third Parties) Act 1999**

No term of this Agreement may be enforced by any person other than a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999.

## 31. **MISCELLANEOUS PROVISIONS**

### 31.1 **Provisions to Remain in Force**

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

## 31.2 **Entire Agreement**

This Agreement and the documents referred to in this Agreement contain all the terms which the parties have agreed in relation to the subject matter of this Agreement.

## 31.3 **Waiver**

No term or provision of this Agreement shall be considered as waived by a party to this Agreement unless a waiver is given in writing by that party. No waiver shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and only to the extent) expressly stated in that waiver.

## 31.4 **Counterparts**

This Agreement may be executed and delivered in any number of counterparts, each of which so executed will be an original but together will constitute one and the same instrument.

## 31.5 **Intellectual Property Rights**

31.5.1 At the request of the Company where required to exercise its rights or perform its obligations under this Agreement and where permitted by the Project Agreement the Authority shall grant to the Company a sub-licence in respect of Intellectual Property Rights licensed to the Authority under or pursuant to the Project Agreement which may only be used by the Company in accordance with the Approved Purposes.

31.5.2 The Company hereby grants to the Authority a non exclusive irrevocable and royalty free licence (carrying the right to grant sub-licences) to use for the duration of this Agreement solely for the purposes of discharging the Authority's obligations in relation to the Facilities and/or the Site under the Project Agreement any Intellectual Property Rights which are created, brought into existence, acquired, used or intended to be used by the Company in relation to the Academy.

## 31.6 **Confidentiality**

31.6.1 Neither the Company nor the Authority shall publish or cause to be published or communicate to any third party any matter relating to this Agreement except with the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

31.6.2 The parties shall comply with their duties and responsibilities under the Data Protection Act 1998 in the performance of this Agreement and shall not unlawfully process or disclose information subject to that Act.

## 31.7 **Freedom of Information**

The parties agree that they will each cooperate to the extent they are legally able to do so to enable any party receiving a request for information under the Freedom of Information Act 2000 to respond to that request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other persons as appropriate and responding to any requests by the party receiving a request for comments or other assistance.

## 31.8 **Amendments**

This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of the parties.

## 31.9 **No Agency**

31.9.1 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the parties.

31.9.2 Save as expressly provided otherwise in this Agreement, the Company shall not be, or be deemed to be, an agent of the Authority and the Company shall not hold itself out as having authority or power to bind the Authority in any way.

31.10 **No Double Recovery**

Notwithstanding any other provisions of this Agreement, no party shall be, entitled to recover compensation or to make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise.

31.11 **Further Assurance**

Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

31.12 **Severability**

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

32. **NOTICES**

32.1 **Form of Notice**

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post or by hand, leaving the same at:-

If to the Authority: Coventry City Council  
Education Capital Team  
Civic Centre 1  
New Council Offices  
Earl Street  
Coventry  
CV1 5RS

If to the Company: [ ]

32.2 **Communication with Representatives**

Where the information or documentation is to be provided or submitted to the Authority's Representative or the Company Representative it shall be provided or submitted by sending the same by first class post or by hand, leaving the same at:-

If to the Authority's Representative: [ ]

If to the Company Representative: [ ]

32.3 **Change of Address**

Any party to this Agreement (and any Representative) may change its nominated address or facsimile number by prior notice to the other parties.

32.4 **Service**

Notices given by post shall be effective upon the earlier of actual receipt and two (2) Business Days after mailing. Notices delivered by hand shall be effective upon delivery.

32.5 **Accrued Rights**

The parties agree that this Agreement shall be extended if at any time it becomes apparent to any party that any of their obligations or rights accruing to any of them in

respect of this Agreement will not have been carried out or completed by the termination of the Project Agreement.

**IN WITNESS** whereof the parties have executed this Agreement as a Deed

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

.....  
Authorised Officer

**EXECUTED AS A DEED** by and on behalf of [ ] acting by:-

.....  
Secretary/Governor

.....  
Governor

## **SCHEDULE 1 – SCHOOL LIAISON PROCEDURE**

### **1 SCHOOL LIAISON COMMITTEE**

The Authority and the Company shall establish and maintain for the duration of this Agreement a Liaison Committee for the Academy ("**School Liaison Committee**"), consisting of one person nominated by the Company and one from the Authority (or such other number of members (being equal numbers from each of those parties) as the School Liaison Committee may determine from time to time).

### **2 FUNCTIONS**

The functions of the School Liaison Committee shall be:

- 2.1 to provide a means for the joint review where appropriate of all aspects of the performance of this Agreement;
- 2.2 to provide a forum for joint strategic discussion and consideration of all aspects with regard to this Agreement including ensuring dissemination of information and consideration of the views of all stakeholders connected with the Project Agreement;
- 2.3 jointly to consider any requests for consents or approvals;
- 2.4 review of provision of the Services and the Works;
- 2.5 Changes; and
- 2.6 any other matters relating to this Agreement that any member may refer to it for consideration.

### **3 ROLE**

The role of the School Liaison Committee is to make recommendations to the Authority and to the Academy, which the Authority and the Academy may accept or reject at their complete discretion. Neither the School Liaison Committee itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Agreement or to make any decision binding on the parties. No discussion, review or recommendation by the School Liaison Committee shall relieve the Authority or the Academy of any liability or vary any such liability or any right or benefit.

### **4 REPRESENTATIVES**

The Authority and the Company may appoint their representatives on the School Liaison Committee and remove those representatives and appoint replacements, by written notice delivered to the other at any time.

### **5 PRACTICES AND PROCEDURES**

Subject to the provisions of this schedule, the members of the School Liaison Committee may adopt such procedures and practices for the conduct of the activities of the School Liaison Committee as they consider appropriate, from time to time, provided that the quorum for a meeting of the School Liaison Committee shall be two (with at least one representative of the Authority and one representative of the Company present).

6 **VOTING**

Each member of the School Liaison Committee shall have one vote each.

7 **CHAIRMAN**

The chairman of the School Liaison Committee ("**Chairman**") shall be nominated by the Authority and by the Company alternatively every six months during the term of this Agreement from the members of the School Liaison Committee (commencing with the Authority). In the event of an equality of votes, the Chairman shall not have a casting vote.

8 **FREQUENCY OF MEETINGS**

The School Liaison Committee shall meet at least termly or at such intervals as the School Liaison Committee shall determine, provided that the Chairman of the School Liaison Committee should convene additional meetings in addition to the termly meetings in emergencies only.

9 **CONVENING OF MEETINGS**

The Chairman of the School Liaison Committee may convene a meeting at any time, or a meeting may be convened upon a member of the School Liaison Committee notifying the Chairman that a meeting should be held.

10 **NOTICES OF MEETINGS**

No less than ten (10) Business Days notice (identifying the agenda items to be discussed at the meeting) shall be given to convene a meeting of the School Liaison Committee except that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

11 **ATTENDANCE AT MEETINGS**

Meetings of the School Liaison Committee should normally involve the attendance (in person or by alternate) of representatives at the meeting. Where the representatives of the School Liaison Committee consider it appropriate (by affirmative vote of all those voting on the matter which must include not less than one representative of the Authority and one representative of the Academy) meetings may also be held by telephone or another form of telecommunication by which each participant can hear and speak to all other participants at the same time.

12 **MINUTES**

Minutes of all decision and meetings of the School Liaison Committee shall be prepared and kept by the Authority and copies circulated promptly to the Academy, normally within ten (10) Business Days of the making of the decision or the holding of the meeting

## SCHEDULE 2– CALCULATION OF THE COMPANY'S CONTRIBUTION

1 For the financial year 2012/2013, the Adjusted School Budget will be calculated by the Education Funding Agency. The Adjusted Schools Budget will be revised by subtracting the following items to give the Revised Adjusted Schools Budget:

- (A) SEN resources;
- (B) PFI Revenue Costs (referred to as DSG Topslice by the Authority);
- (C) National Non Domestic Rates;
- (D) Former Ethnic Minority Achievement Grant;
- (E) Social Inclusion/Additional Education Needs Funds; and
- (F) Any other specific earmarked funds.

The contribution payable by the Company to the Authority shall therefore be calculated in accordance with the following formula:

$$RP \pm PT - D + \text{DSG Topslice}$$

Where:

RP = Relevant Proportion of the Revised Adjusted School Budget.

PT = Pass Through Costs (identified under clauses 12.7 and 12A)

D = Deductions identified under clause 13.3.1

Worked Example for calculation of the Company's Contribution (2012/13 Financial Year)

Adjusted School Budget	£7,920,654
Subtractions	
(A) SEN resources;	£ 139,682
(B) PFI Revenue Costs (referred to as DSG Topslice by the Authority);	£ 323,733
(C) National Non Domestic Rates;	£ 320,600
(D) Former Ethnic Minority Achievement Grant;	£ 23,076
(E) Social Inclusion/Additional Education Needs Funds; and	£ 67,315
(F) Any other specific earmarked funds.	£ 0
	£ 874,406
Revised Adjusted Schools Budget	£7,046,248
Relevant proportion (9.5%)	£ 669,394
Plus Assumed Pass Through Costs	£ 100
Less Assumed Deductions	£ 50
Plus DSG Topslice	£ 323,733
<b>Company's Contribution equals</b>	<b>£ 993,177</b>

2 In financial years subsequent to 2012/2013, the Revised Adjusted School Budget will be calculated annually in accordance with the principles set out in paragraph 1 above,

3 The Company agrees to supply the Authority with the data necessary to undertake the calculation of the Revised Adjusted School Budget and Relevant Proportion when required.

4. In each financial year subsequent to 2012/13, the Company and the Authority shall negotiate in good faith with a view to agreeing any necessary revision or revisions to the Relevant Proportion and/or calculation of the Revised Adjusted Schools Budget, taking into account:

- (i) Factors listed at (A) to (F) in paragraph 1 of this schedule where they can be individually identified in the new funding arrangements;

- ii) Any change in the basis or terms of funding for schools that are maintained by the Authority.
- iii) The financial position of the PFI Scheme and the company's overall contribution to that Scheme.

5 Adjustments to the Company's contribution in accordance with clause 12.7 shall be invoiced on a monthly basis and reconciled at the beginning of the next Financial Year. The Authority will return Deductions to the Company the month after their receipt through deductions to the monthly invoices.

## **SCHEDULE 3 – CORPORATE WARRANTIES**

### **PART 1 - WARRANTIES BY THE COMPANY**

#### **1. DUE INCORPORATION OF THE COMPANY AND ITS CAPACITY**

- 1.1 The Company is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on its activities as they are now being conducted.
- 1.2 The Company:-
  - 1.2.1 has the power to enter into and to exercise its rights and perform its obligations under this Agreement; and
  - 1.2.2 has taken all necessary action to authorise the execution of and the performance by it of its obligations under this Agreement.
- 1.3 The Company is not subject to any other statutory or contractual obligation compliance with which will or is likely to have a material adverse effect on the ability of the Company to perform its obligations under this Agreement, the Funding Agreement or the Principal Agreement.
- 1.4 This Agreement constitutes or will when executed constitute legal, valid, binding and enforceable obligations on the Company.
- 1.5 Every consent and approval required by the Company in connection with the execution, delivery, validity or enforceability of this Agreement or the performance by the Company of its obligations under this Agreement have been obtained or made and is in full force and effect and there has been no fault in the observance of the conditions or restrictions (if any) imposed or, in connection with any of the same.

#### **2. NO LITIGATION**

No claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Company, pending or threatened against the Company or any of its assets which will or might have a material adverse effect on the ability of the Company to perform its obligations under this Agreement.

#### **3. SOLVENCY OF THE COMPANY**

- 3.1 No proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Company threatened) for its winding-up or dissolution or for the appointment of a receiver administrative receiver, administrator, liquidator or similar officer in relation to any of the Company's assets or revenues.
- 3.2 The Company undertakes to inform the Authority as soon as reasonably practicable of any proposed meetings of creditors which relate to the Company's business.

## **PART 2 - WARRANTIES BY THE AUTHORITY**

1. The Acceptance Certificate has been issued under clause 20 of the Project Agreement
2. The copies of the documents issued to the Company and/or its advisers listed in Part 3 of this Schedule are complete and accurate copies of the documents in question.
3. There have been no changes or amendments to the Project Agreement other than pursuant to the documents listed in Part 3 of this Schedule.
4. There are not now, nor have there been any disputes referred to adjudication pursuant to clause 65 of the Project Agreement.

**PART 3  
DOCUMENTS**

1. The Project Agreement and Schedules dated 7th December 2004
2. The Deed of Variation to the Project Agreement dated 5<sup>th</sup> November 2010
3. A letter documenting certain matters relating to the Project Agreement dated 14<sup>th</sup> September 2010

## SCHEDULE 4 - LEASES

## SCHEDULE 5 - INFORMATION PROTOCOL

1. The parties recognise the benefit of cooperation and sharing of Information as part of a prudent risk management strategy. Each party shall notify the other parties of relevant timescales (contractual and non-contractual) to which they are bound or committed, and shall use reasonable endeavours to facilitate exchange of Information in good time to meet such timescales.
2. The Authority shall provide to DFE and the Company (in each case solely in respect of matters affecting the Site):-
  - 2.1 promptly upon becoming aware of the same, details of any actual or potential claim made or potentially to be made against the Authority under the Project Documents which the Authority may seek to recover from the Company or DFE;
  - 2.2 on reasonable request, details of claims that the Authority is progressing under the Project Documents (irrespective of whether the claims are being made at the request of the Company or DFE);
  - 2.3 any notice of termination served on the Authority pursuant to the Project Documents;
  - 2.4 service of any notice by the Authority under a Project Document purporting to terminate that agreement;
  - 2.5 details of any matter which may lead to an increase in the Relevant Proportion including indexation, any benchmarking/market testing, any insurance costs review and any Change in Law; and
  - 2.6 such other information as DFE or Company may reasonably require.
3. The Authority shall provide to the Company (in each case solely in respect of matters affecting the Site):-
  - 3.1 copies of insurance certificates obtained from the Provider and copies of insurance reports provided by the Provider as part of the insurance premia sharing mechanism under the Project Agreement;
  - 3.2 copies of performance reports received from the Provider pursuant to the relevant payment mechanisms;
  - 3.3 quarterly (or more regular by agreement of the parties) reports on instances of Qualifying Vandalism together with details of the costs associated with the same and the proposed or agreed responsibility for such costs;
  - 3.4 copies of any survey reports obtained by the Authority having exercised its rights to require surveys pursuant to the Project Documents;
  - 3.5 copies of the Maintenance Programme provided to the Authority by the Provider from time to time pursuant to the Project Agreement;
  - 3.6 notice of any intention on the part of the Authority to exercise its step in rights pursuant to the Project Documents;
  - 3.7 details of any information given to the Authority by the Provider in relation to the Project Agreement.
  - 3.8 details of any information given by the Authority to the Provider in relation to the Project Agreement.

4. The Company shall provide to the Authority and to DFE, promptly upon becoming aware of the same, details of any actual or potential claim made or potentially to be made against the Authority under the Project Documents.
5. The Company shall provide to the Authority:-
  - 5.1 details of any breaches of the Project Documents by the Provider not addressed by the relevant payment mechanisms of which it is aware;
  - 5.2 details of any grounds to exercise rights or remedies in favour of the Authority under the Project Documents of which it is aware;
  - 5.3 details of any instances of damage to the Site, the Facility or ICT of which it is aware, together with details of any contact with the Provider it has in respect of the same.
6. A party providing information pursuant to this Schedule 5 may require payment of its reasonable costs in providing such information where, acting reasonably, it believes it is appropriate to do so given the nature or volume of the information or requests for information, or any other relevant factors.

## **SCHEDULE 6 – SCHOOL USE INFORMATION**

Third Party use

The School has provided this to the Authority and it will be inserted in the final document

**DATED**

**2012**

**(1) THE COUNCIL OF THE CITY OF COVENTRY**

**- and -**

**(2) THE SECRETARY OF STATE FOR EDUCATION**

**- and -**

**(3) [ACADEMY]**

**DFE PRINCIPAL AGREEMENT**

relating to

[Caludon Castle Academy]

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**THIS PRINCIPAL AGREEMENT** is made on 2012  
**BETWEEN:**

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** whose principal premises are the Council House Earl Street Coventry CV1 5RR (the "**Authority**");
- (2) **THE SECRETARY OF STATE FOR EDUCATION** whose registered office is at Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**DFE**"); and
- (3) **[ACADEMY]** (company number [◆]) whose registered office is at **[address]** (the "**Academy**").

**WHEREAS**

- A The Authority is a children's services authority with duties and powers to provide primary and secondary education under the Education Acts 1996-2005 and the School Standards and Framework Act 1998 and the Education and Inspections Act 2006.
- B The Authority has entered into a PFI project agreement with Coventry Education Partnership Limited on 7 December 2004 pursuant to its powers contained in section 2 of the Local Government Act 2000, section 14 of the Education Act 1996, section 22 of the School Standards and Framework Act 1998 and section 111 of the Local Government Act 1972 in order to enable investment in certain educational services and facilities for which it is responsible at Caludon Castle School, Axholme Road, Wyken, Coventry CV2 5BD.
- C The governing body and the parties have agreed that Caludon Castle School shall close and henceforth the Academy shall deliver educational services at the School as the **[full name of new Academy]**.
- D The Authority and the Academy intend to enter into a School Agreement on or around the date of this Agreement. The Academy and the DFE have entered into a funding agreement dated on or around the date of this Agreement.
- E The parties agree to the terms and conditions of this Agreement.

**15 DEFINITIONS AND INTERPRETATION**

**15.1 Definitions**

In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

**"Academy Contribution"** means the sum payable by the Academy to the Authority, by way of contribution to the Unitary Charge pursuant to, and calculated in accordance with, the School Agreement;

**"Academy Related Party"** means:

- (a) an officer agent or employee of the Company acting in the course of his office or employment including without limitation any director of the Company or any member of the local governing body of the Academy;
- (b) in relation to the Academy during the School Day any student of the Academy or any person visiting the Academy at the invitation (whether express or implied) of the Company;
- (c) in relation to the Academy during any period of Community Use any person using the Academy for that purpose at the invitation whether express or implied of the Company;
- (d) in relation to the Academy during any Additional Session any student of the Academy or any person visiting the Academy at the invitation (whether express or implied) of the Company;

(e) in relation to the Academy those times and in respect of those parts of the Site as set out in schedule 14 of the Project Agreement for which responsibility is stated to be that of the Authority any student of the Academy; and

(f) any contractors and their officers, employees and agents involved in the operation and/or maintenance of works or services at the Site procured by the Company,

(g) but not including any of the Authority, the Provider, the DFE or any of their respective Related Parties;

**"Affordability Gap"** means the sum of money being the shortfall between (i) the aggregate of the Unitary Charge net of deductions and any amounts received under the Payment Mechanism and (ii) the aggregate of the amounts received by the Authority in a relevant Financial Year pursuant to:

(a) the Promissory Note;

(b) the School Agreement;

(c) the Project Agreement (for the avoidance of doubt this does not include deductions or any amounts received under the Payment Mechanism); and

as may be amended from time to time;

**"Agreement"** means this agreement, its schedules and any annexures hereto, as may be amended from time to time;

**"Approved Suitable Substitute"** has the meaning given to it in clause 29.2;

**"Area"** means the area within which the Authority is statutorily responsible for the provision of educational services;

**"Articles of Association"** means the articles of association of the Academy (as may be amended from time to time);

**"Authority Change"** has the meaning given to "Authority Variation" in the Project Agreement;

**"Authority Related Party"** means:

(a) an officer servant, agent, employee, contractor or sub-contractor of the Authority acting in the course of his office or employment or appointment (as appropriate) at the Site; or

(b) any person visiting or using the Site at the invitation (whether express or implied) of the Authority (which for the avoidance of doubt shall include any person visiting or using the Site for the purpose of Community Use at the invitation of the Authority);

but excluding in each case the Academy, the Provider, the DFE and any of the their Related Parties;

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

**"Community Use"** has the meaning given in the School Agreement;

**"DFE Related Party"** means an officer, employee, agent, representative, contractor or subcontractor (of any tier) of the DFE acting in the course of his office or employment or appointment (as appropriate) but excluding, in each case, the Authority, the Provider, the Academy and any of their respective Related Parties;

**"Dedicated Schools Grant" or "DSG"** means the grant of that name paid to the Authority by the Department for Education under section 14 of the Education Act 2002 and shall include a reference to any successor grant(s) and/or similar funding arrangements, as may be adjusted in accordance with clause 23 and schedule 2;

**"Direct Losses"** means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), to the extent that the Authority is obliged to pay such amounts to the Provider under the Project Agreement;

**"Earmarked Annual Grant" or "EAG"** has the meaning given to it in the Funding Agreement and shall include a reference to any successor grant(s);

**"Educational Services"** has the meaning given to it in the Project Agreement;

**"Event of Default"** means the occurrence of any event or circumstance permitting the DFE to terminate the Funding Agreement;

**"Extended Use Contractor"** has the meaning given in the Project Agreement;

**"Financial Year"** means the financial year of the Authority being each year commencing on 1 April (or as otherwise notified by the Authority);

**"Flooding Rights"** means the rights of the DFE specified in the Articles of Association and in accordance with the Funding Agreement permitting it to appoint additional governors to the board of the Academy;

**"FM Services"** means the facilities management services to be provided by the Provider at the Site;

**"Funder's Direct Agreement"** means the agreement dated 7 December 2004 made between (1) the Authority (2) the Provider (3) **[the Senior Lenders]; [Authority to complete]**

**"Funding Agreement"** means the funding agreement made pursuant to section 1 of the Academies Act 2010 between the DFE and the Academy dated on or around the date of this Agreement (as may be amended from time to time);

**"General Annual Grant" or "GAG"** has the meaning given in the Funding Agreement and shall include a reference to any successor grant(s);

**"Guidance"** means any applicable guidance or directions with which the parties are bound to comply;

**"GAG Funding"** shall have the meaning given to it in the Funding Agreement;

**"Information Protocol"** means the information sharing protocol set out in schedule 1;

**"Lease"** means the Lease granted from the Authority to the Academy pursuant to the School Agreement;

**"Legislation"** means any one or more of the following:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and

- (d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

in each case in the United Kingdom;

**"Local Authority"** means a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in England established as a successor to principal councils in relation to Educational Services;

**"Normal Payment Matters"** means:

- (a) any failure of the Academy to pay the Academy Contribution when this is due and payable in accordance with the School Agreement;
- (b) any failure of the Academy to make payments to the Authority of undisputed amounts pursuant to clause 17.2 (Authority Damage to the Facility) of the School Agreement to the extent that these relate to payments due to the Provider under the Project Agreement;
- (c) any failure of the Academy to make payments due to the Authority of undisputed amounts under this Agreement or the School Agreement to the extent that these relate to payments due to the Provider under the Project Agreement and to the extent that the DFE has provided funding to the Academy expressly in respect of such payments due to the Authority;
- (d) any failure of the Academy:
- (i) to make payments of undisputed amounts due to the Authority pursuant to clause 16.5 (Sharing of Insurance Cost Differentials) of the School Agreement to the extent that these relate to payments due to the Provider under the Project Agreement; or
  - (ii) to pay to the Authority any deductible or excess costs in respect of the Project Insurances (as defined in the School Agreement) pursuant to clause 17.2.3 of the School Agreement to the extent that these relate to payments due to the Provider under the Project Agreement; and
- (e) any other liability of the Academy under this Agreement or the School Agreement to the extent that these relate to payments due to the Provider under the Project Agreement and which the DFE reasonably determines should be payable by the Academy to the Authority,

and **"Normal Payment Matter"** shall be construed appropriately;

**"Payment Mechanism"** means the payment mechanism contained in Schedule 4 of the Project Agreement;

**"Prescribed Rate"** has the meaning given in the Project Agreement;

**"Project"** means the provision of serviced accommodation to the Authority in relation to the School by the Provider as contemplated by the Project Agreement;

**"Project Agreement"** means the PFI project agreement dated 7 December 2004 and entered into by (1) the Authority and (2) the Provider (as may be amended from time to time);

**"Project Agreement Termination Notice"** has the meaning given to the term Termination Notice in clause 39 of the Project Agreement;

**"Project Documents"** means the Project Agreement and the Funder Direct Agreement;

**"Promissory Note"** means the promissory note issued to the Authority by the Department for Education dated on or around the date of the Project Agreement and relating to the Project Agreement;

**"Provider"** means Coventry Education Partnership Limited a limited company registered in England and Wales and which is the counterparty of the Authority to the Project Agreement;

**"Provider Change"** means a "Variation" (as defined in the Project Agreement) proposed by the Provider in accordance with clause 58.3 of the Project Agreement;

**"Provider Related Party"** has the meaning given in the Project Agreement;

**"Provider Termination Notice"** has the meaning given in clause 39.6 of the Project Agreement;

**"Related Party"** means any Academy Related Party, Authority Related Party, DFE Related Party, or Provider Related Party (as the case may be);

**"Relevant Assets"** means:

- (a) assets at any time transferred to the Academy by the Provider, and/or the Authority for nil consideration;
- (b) assets, the acquisition of which by the Academy was wholly or mainly financed through grant payments made by the DFE to the Academy under the Funding Agreement; and
- (c) assets not falling within paragraphs 0 and 0 above and which the DFE and the Academy have agreed prior to the date of termination of the Funding Agreement (in accordance with its terms), will be purchased by the DFE from the Academy on the terms set out in the Funding Agreement;

provided that such assets are transferable as at the date of termination of the Funding Agreement;

**"Relevant Notice"** means any notice issued under a Project Document which relates to the School (save any issued in accordance with the payment mechanism within the Project Agreement) relating to:

- (a) a breach of that Project Document;
- (b) the occurrence of a Compensation Event, Relief Event or Force Majeure Event Cause (each as defined in the Project Agreement); and/or
- (c) the termination of that Project Document; or
- (d) any other notice which (assessed reasonably) may relate to circumstances which are expected to have a material adverse effect on the Project;

**"Representative"** means the duly authorised representative of each party (as the case may be) appointed in accordance with clause 26;

**"School"** means the educational establishment, buildings and facilities located at the Site;

**"School Agreement"** means the agreement entered into on or about the date hereof between (1) the Authority, (2) the Academy relating to the provision of facilities and services to the Academy;

**"Site"** means the area shown edged red on the site plans attached to the Lease;

**"Suitable Substitute"** means a charitable company incorporated in England and Wales limited by guarantee whose objects include power to maintain an academy pursuant to section 1 of the Academies Act 2010, the governing body of a maintained school, or some other legal person not comprising an Unsuitable Third Party and proposed by the DFE as having legal capacity, power, authority, competence and resources (including financial and educational resources) to become a party to and perform the obligations of the Academy under this Agreement, the School Agreement and the Lease;

**"Term"** means any term in each academic year for the School;

**"Transfer Agreement"** means an agreement entered into on or about the date hereof between (1) the Authority and (2) the Academy and (3) the governing body of Caludon Castle School in relation to the transfer of assets and staff from the Authority to the Academy;

**"Unitary Charge"** means the sum payable by the Authority to the Provider in accordance with the Project Agreement; and

**"Unsuitable Third Party"** means any of: (a) any person who has a material interest in the production, distribution or sale of tobacco products, alcoholic drinks, pornography, arms, weapons and/or gambling or gaming services; (b) any person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of educational services in the area; or (c) any person whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security.

## 15.2 Interpretation

In this Agreement except where the context otherwise requires:

15.2.1 the masculine includes the feminine and vice-versa;

15.2.2 the singular includes the plural and vice-versa;

15.2.3 a reference to any clause, subclause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary a reference to such clause, subclause, paragraph, schedule, recital or annex of and to this Agreement;

15.2.4 save where otherwise provided in this Agreement any reference to this Agreement or to any other contract, agreement or document shall be to such contract, agreement or document as amended, varied, supplemented, novated or assigned;

15.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;

15.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

15.2.7 headings are for convenience of reference only;

15.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;

15.2.9 any obligation on a party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;

15.2.10 subject to any express provisions of this Agreement to the contrary, the obligations of any party are to be performed at that party's own cost and expense.

### **15.3 Precedence**

In the event of any conflict between the provisions of this Agreement and the School Agreement, the provisions of this Agreement shall prevail.

### **15.4 Schedules**

The schedules to this Agreement form part of this Agreement. In the event of any inconsistency between the provisions of the main body of this Agreement and the schedules, the main body shall take precedence.

## **16 ACKNOWLEDGEMENTS**

16.1 The parties acknowledge that the Authority should not suffer, in connection with the Project Agreement, any adverse consequences arising out of the School's status as an academy rather than a school maintained by the Authority and that the aim of this Agreement is to avoid or, if that is not practicable, to mitigate any such effects.

16.2 In particular, the parties acknowledge:

16.2.1 the statutory responsibility of the Authority to provide Educational Services;

16.2.2 that the Academy is obliged to pay the Academy Contribution to the Authority pursuant to the School Agreement;

16.2.3 that the Academy shall be granted the Lease in respect of the Site to enable it to run the School in accordance with the terms of the School Agreement; and

16.2.4 that the acts of Academy Related Parties shall become the responsibility of the Academy with effect from the date of the School Agreement.

16.3 Further, the DFE:

16.3.1 confirms that it shall maintain full revenue support to the Authority for the term of the Project Agreement in accordance with the terms of the Promissory Note; and

16.3.2 intends that schools other than the School maintained by the Authority should not be adversely affected financially by the School's status as an academy rather than a school maintained by the Authority whether initially, on an on-going basis, or in the event of any future closure of the School.

## **17 COMMENCEMENT, DURATION AND EXPIRY**

### **17.1 The term of the Agreement**

This Agreement will commence on the date hereof and will terminate or expire in accordance with clause 27.

### **17.2 Provisions surviving expiry:**

17.2.1 Notwithstanding the expiry or termination of this Agreement, such expiry or termination shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of expiry or termination.

- 17.2.2 Without limitation to clause 17.2.1, the expiry or termination of this Agreement shall not affect the continuing rights and obligations of the parties under the clauses in the table below and/or under any other provision of this Agreement which is expressed to survive expiry or termination or which is required to give effect to such expiry or termination or the consequences of such expiry or termination:

<b>Clause/Schedule Reference</b>	<b>Description</b>
15	Definitions and interpretation
16	Acknowledgements
17.2	Provisions surviving expiry
18	Normal Payment Matters
20	Authority obligations
21	Information protocol
25	General Assistance and Co-operation
28	Flooding Rights
29	Failure of the Academy
30	Assignment
31	Dispute Resolution
32	Miscellaneous

## **18 NORMAL PAYMENT MATTERS**

- 18.1 The Academy shall, subject to clauses 18.3, 18.4, 18.5, 18.8 to 18.11 (inclusive), be responsible for and shall release and indemnify the Authority from and against all liability for Direct Losses that arise out of or in connection with any Normal Payment Matters. No claim shall be made under this clause 18.1 unless the Authority has provided to the Academy a valid VAT invoice.
- 18.2 NOT USED
- 18.3 The Authority shall promptly upon becoming aware of any claims under clause 18.1 which it intends to pursue serve written notice on the Academy (with a copy provided to the DFE) of such claims (the "Academy Notification") and the Academy shall discharge any liability in full within five (5) Business Days of such notification or, if it disputes the Academy Notification, subject to clause 18.4, within five (5) Business Days following determination of such dispute.
- 18.4 If the Academy fails to pay any amount detailed in the Academy Notification within five (5) Business Days of the Academy Notification (regardless of whether or not the Academy has disputed the claim) the Authority shall promptly notify the DFE in writing (the "DFE Notification") and the DFE shall, subject to clauses 4.6 and 18.9 to 18.11 (inclusive), pay any such claim to the Authority in full within twenty (20) Business Days of the DFE Notification unless such claim has previously been satisfied by the Academy. In the event that it is later agreed or determined that the Authority was not entitled to either the whole or any part of the amounts claimed (an "Illegitimate Claim"), DFE may set off any Illegitimate

Claims from the DSG or from any other monies due to the Authority whether under this Agreement or otherwise.

- 18.5 Neither the Academy nor the DFE shall be responsible or be obliged to indemnify the Authority pursuant to this clause 18 to the extent that any Normal Payment Matters liabilities are caused by (i) the negligence or wilful misconduct of the Authority, the Provider, or any of their Related Parties or (ii) a breach by the Authority or any Authority Related Party of this Agreement, the School Agreement, the Project Documents and/or the Lease or (iii) any breach of the Project Agreement by the Provider or a Provider Related Party.
- 18.6 The DFE shall not be responsible or be obliged to indemnify the Authority pursuant to clause 18.4 to the extent that the Authority is in breach of its obligations under clause 20 to provide information that is relevant to such claim.
- 18.7 The DFE shall promptly give the Academy written notice of any steps taken by the Authority to enforce its rights pursuant to clause 18.4 including details of amounts which the DFE is proposing to pay to the Authority under clause 18.4.
- 18.8 The Authority and the Academy shall not settle or compromise any claim which may be fully or partially funded by the DFE pursuant to the terms of this Agreement without the prior written consent of the DFE (such consent not to be unreasonably withheld or delayed).
- 18.9 For the avoidance of doubt, the indemnities in clauses 18.1 and 18.4 shall not extend to any Direct Losses incurred by the Authority to the extent caused by any Authority Change or Provider Change which has not been approved or deemed approved in accordance with the School Agreement or, in the event the consent of the DFE is required thereto pursuant to this Agreement, which has not been so consented to.
- 18.10 Where any party (the "**Indemnified Party**") wishes to make a claim under this Agreement against the other (the "**Indemnifying Party**") whether in relation to a claim made against it by a third party (a "**Third Party Claim**") or otherwise, then:
  - 18.10.1 any and all claims by the Indemnified Party shall be made in accordance with clause 18; and
  - 18.10.2 the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim; and
  - 18.10.3 the Indemnifying Party shall, if it wishes to have conduct of any Third Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third Party Claim by the Indemnifying Party.
- 18.11 Any liability under a claim made pursuant to any indemnity contained in this Agreement shall be reduced to the extent that the Indemnified Party recovers any sums under the terms of any insurance policy for the time being in place.
- 18.12 If the Academy or DFE shall have paid to the Authority any amount in respect of a claim under any indemnity contained in this Agreement and the Authority subsequently receives or recovers from a third party (including an insurer) a sum which is referable to such claim, the Authority shall forthwith repay to the Academy or, as the case may be, DFE the amount so received or recovered less the reasonable costs and expenses incurred in connection with such recovery up to the amount which has been paid by the Academy or DFE in respect of such claim.
- 18.13 Nothing in this Agreement shall make the DFE liable or responsible to the Authority in respect of any failure by the Academy to make a payment due to the Authority under the School Agreement where and to the extent that such payment is not for the purpose of defraying the cost to the Authority of a sum paid or payable by it to the Provider under and in accordance with the terms of the Project Agreement (for the avoidance of doubt, any administration or other fee which may be imposed by the Authority on the Academy in

relation to the relevant cost to the Authority shall not be counted as part of that cost for the purposes of this clause 4.13).

18.14 For the avoidance of doubt, the protections under the terms of this Agreement which are provided by the DFE to the Authority in relation to the performance by the Academy of certain obligations under this Agreement or the School Agreement do not apply in respect of any Separate Agreement. For this purpose, "Separate Agreement" means any agreement (including, without limitation, any management or premises services agreement) which the Authority has entered or may enter into with the Academy where and to the extent that the terms of the said agreement are not set out in this Agreement or in the document which is:

18.14.1 titled "School Agreement";

18.14.2 entered into as a contract by the Authority and the Academy on or about the date of this Agreement; and

18.14.3 in the form approved by or on behalf of the DFE,

as such document may be amended, varied, changed, novated or assigned with the prior written consent of the DFE in accordance with the terms of this Agreement.

**19 NOT USED**

## **20 AUTHORITY OBLIGATIONS**

The Authority shall:

20.1 NOT USED

20.2 provide the DFE with such information as it may reasonably require on a quarterly basis on the operation of the Project Agreement to the extent that it relates to the School provided that the DFE shall pay the reasonable costs of the Authority for the provision of such information;

20.3 inform the DFE promptly (providing such details as the DFE may reasonably require) on becoming aware of any breach or non-compliance by the Academy with its obligations under the School Agreement or this Agreement or where it is reasonably foreseeable to the Authority that any breach or non-compliance of the School Agreement or this Agreement by the Academy shall occur;

20.4 forthwith inform the DFE whenever any Relevant Notice is served under any Project Document;

20.5 promptly inform the DFE of any proposed changes to the Project Documents or the School Agreement or any other relevant contract which may (assessed objectively) lead to additional potential liabilities for the Academy and/or the DFE under the terms of this Agreement;

20.6 promptly inform the DFE whenever it exercises any rights or remedies under the Project Documents in connection with a breach thereof by any of the counterparties and/or relating to poor performance of obligations under the Project Agreement by the Provider (but not including the making of payment mechanism deductions) where these relate to the School or are relevant to the School Agreement;

20.7 exercise such rights or remedies that the Authority may have available to it under the Project Documents in circumstances where the DFE considers (acting reasonably) that the exercise of the relevant right or remedy shall assist the DFE in mitigating its potential or actual exposure under this Agreement;

- 20.8 promptly pay to the Academy any sums or monies recovered from the Provider and which are properly due to the Academy under the School Agreement.
- 20.9 immediately notify the DFE and the Academy on receipt of a Project Agreement Termination Notice and any Provider Termination Notice and provide all relevant information (including a copy of the relevant notice);
- 20.10 immediately notify the DFE and the Academy following confirmation from the Provider that the breach giving rise to the Provider Termination Notice has been remedied;
- 20.11 following receipt of a Provider Termination Notice, where DFE notifies the Authority that it intends to exercise its Flooding Rights, the Authority shall immediately advise the DFE whether or not the breach has been remedied; and
- 20.12 promptly notify the DFE and the Academy of any breach of the Project Agreement which, if it was repeated or continued, could give rise to the right for the Provider to serve a Provider Termination Notice under the Project Agreement.

## **21 INFORMATION PROTOCOL**

Each of the parties shall comply with the relevant obligations set out in the Information Protocol.

## **22 PROJECT DOCUMENTS AND SCHOOL AGREEMENT**

- 22.1 The Authority shall not agree to any amendment, variation, change, novation or assignment of any Project Document, or give any consent or approval under any Project Document, where the effect of such action shall on the balance of probabilities potentially expose the DFE to greater liabilities by operation of either clause 18.4 or clause 28.5 without the prior written consent of the DFE (not to be unreasonably withheld or delayed). In the event that such action be contemplated by the Authority, the Authority shall take into account the DFE's reasonable comments on any proposals or relevant documentation.
- 22.2 The Authority and the Academy shall not agree to any amendment, variation, change, novation or assignment of the School Agreement without the prior written consent of the DFE (not to be unreasonably withheld or delayed). In the event that such action be contemplated by the Authority and/or the Academy, such parties shall take into account the DFE's reasonable comments on any proposals or relevant documentation.

## **23 FINANCIAL MATTERS**

- 23.1 The DFE shall pay on an annual basis to the Authority the Dedicated Schools Grant adjusted as appropriate in accordance with schedule 2 and in accordance with the DFE's usual policies and procedures.
- 23.2 Where schedule 2 makes provision for the payment of the Affordability Gap, the DFE shall pay to the Authority or the Academy (as the case may be) a sum equal to the Affordability Gap.
- 23.3 The Authority and the Academy shall not agree to any amendment to the basis for calculation of the Academy Contribution without the prior written consent of the DFE (not to be unreasonably withheld or delayed).

## **24 INSURANCE ARRANGEMENTS**

- 24.1 The parties shall use best endeavours to ensure that, from the date hereof the Academy is a named co-insured on any project-specific insurances that the Provider may have taken out pursuant to the Project Agreement with an appropriate waiver of subrogation.

- 24.2 The Academy shall not take or fail to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any reasonable insurer to refuse to pay any claim under any policy taken out pursuant to the Project Documents.
- 24.3 The Academy shall take out and maintain insurances which:
- 24.3.1 cover the risk of physical loss and/or damage to the contents of the School (but this shall in no way extend to the taking out and maintenance of any insurance in respect of any risk covered by any insurance required to be taken out and maintained under the Project Documents); and
  - 24.3.2 are otherwise required by Legislation in relation to the risks relevant to the operation of the School and the provision of Educational Services at the School.

## **25 GENERAL ASSISTANCE AND COOPERATION**

- 25.1 Subject to clause 25.2, each party undertakes to co-operate in good faith with the other parties to facilitate the proper performance of this Agreement and in particular each party shall:
- 25.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the other parties;
  - 25.1.2 not unnecessarily interfere with the rights of the other parties and their Related Parties, agents, representatives or subcontractors in performing their obligations under this Agreement or the School Agreement nor in any other way hinder or prevent such other party from performing those obligations; and
  - 25.1.3 assist the other parties and their Related Parties in performing their obligations so far as is reasonably practicable.
- 25.2 Nothing in clause 25.1 shall:
- 25.2.1 interfere with the right of any party to lawfully arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;
  - 25.2.2 oblige any party to incur any material additional cost or expense in excess of that required by its proper performance of its obligations under this Agreement;
  - 25.2.3 relieve a party from any obligation under any indemnity contained in this Agreement or the School Agreement or from any obligation to pay any debt due or payable under this Agreement or the School Agreement; or
  - 25.2.4 fetter the discretion of the parties in fulfilling their statutory functions.

## **26 REPRESENTATIVES**

- 26.1 Each party shall from time to time appoint a Representative who shall be authorised to exercise the rights, functions and powers of the relevant nominee party (as the case may be) under this Agreement and the identity of such Representative shall be notified to the other parties in writing.
- 26.2 Each Representative shall be entitled to at any time by written notice to the other parties appoint an alternate who shall for purposes of this clause be regarded as the relevant Representative.

- 26.3 Each party shall be entitled to treat any act of a Representative as being expressly authorised by the relevant nominee party and shall not be required to determine whether any express authority has in fact been given.

## **27 TERMINATION**

- 27.1 This Agreement shall terminate on the earlier of:
- 27.2 expiry or early termination of the Project Agreement; and
- 27.3 termination of the School Agreement.

## **28 FLOODING RIGHTS**

- 28.1 The Authority acknowledges that the DFE benefits from the Flooding Rights which it may exercise in respect of the Academy in accordance with the Articles of Association and the Funding Agreement.
- 28.2 The DFE shall promptly notify the Authority upon exercising any of its Flooding Rights, providing details as may reasonably be required by the Authority. The DFE shall notify the Authority when the exercise of any Flooding Rights ceases.
- 28.3 In the event that the Academy is in material breach of the Schools Agreement with the consequence that such breach has placed the Authority in breach of the Project Documents, the Authority may request that the DFE:
- 28.3.1 exercise its Flooding Rights; and/or
  - 28.3.2 take any other reasonable action to the extent that the DFE is permitted to do so (such action to be agreed between the DFE and the Authority, both parties acting reasonably); and/or
  - 28.3.3 compensate the Authority for Direct Losses which the Authority has incurred as a result of such breach.
- 28.4 Following a request made by the Authority under clause 28.3, the DFE shall consult with the Authority in relation to the course of action which DFE proposes to take. The DFE shall act reasonably when considering any request made by the Authority. The DFE shall retain discretion whether to take the action requested by the Authority or whether to take another course of action, provided always that the DFE acts reasonably when exercising its discretion.
- 28.5 In the event that the DFE decides to compensate the Authority pursuant to clause 28.3.3, the DFE shall have the right to specify such conditions in relation to such compensation as it sees fit.

## **29 FAILURE OF THE ACADEMY**

- 29.1 The DFE may, in circumstances where a final notice has been served on relevant parties terminating the Funding Agreement (in accordance with the terms of the Funding Agreement), propose to the Authority a Suitable Substitute to undertake the obligations and rights of the Academy under this Agreement, the School Agreement and the Lease and, if proposed, the DFE shall provide the Authority with all information relating to such proposed Suitable Substitute as the Authority may reasonably require to determine whether the Suitable Substitute is able to comply with the obligations it is proposed to undertake.
- 29.2 The Authority shall within a reasonable period from receipt of all information provided in accordance with clause 29.1, notify the DFE whether it approves of such proposed Suitable Substitute (such approval not to be unreasonably withheld or delayed) (hereafter referred to as the "**Approved Suitable Substitute**"). If the Authority does not approve the proposed

Suitable Substitute, either the Authority's decision shall be referred to the Dispute Resolution Procedure or the DFE may propose an alternative Suitable Substitute and clauses 29.1 and 29.2 shall apply in respect of such alternative Suitable Substitute.

- 29.3 Where the Authority notifies the DFE of the Approved Suitable Substitute pursuant to clause 29.2, the parties shall undertake all necessary steps to cooperate to:
- 29.3.1 (if not already terminated) terminate the Funding Agreement, and ensure that the Approved Suitable Substitute is offered funding on reasonably acceptable terms from the DFE for the operation of an academy at the Site;
  - 29.3.2 novate this Agreement and the School Agreement to the Approved Suitable Substitute;
  - 29.3.3 assign the Lease to the Approved Suitable Substitute as tenant pursuant to the terms of such Lease;
  - 29.3.4 not prevent or frustrate the novation or assignment of any rights and/or liabilities to the Approved Suitable Substitute as envisaged by this clause 29.
- 29.4 Any transfer, novation and/or assignment pursuant to clause 29.3 shall become effective by a novation of this Agreement, the School Agreement and assignment of the Lease to the Approved Suitable Substitute whereupon the Academy shall be released from any obligations or liabilities under or in connection with this Agreement, the School Agreement and the Lease from that date and the Approved Suitable Substitute shall become liable for such obligations or liabilities.
- 29.5 Where:
- 29.5.1 the DFE notifies the Authority that, in circumstances which would permit the DFE to propose a Suitable Substitute, the DFE has chosen not to propose a Suitable Substitute to the Authority pursuant to clause 29.1, and the DFE has provided to the Authority all relevant details of such circumstances and reasons for it not proposing a Suitable Substitute; or
  - 29.5.2 an Approved Suitable Substitute has not been appointed or agreed;
- then, the DFE may serve written notice on the Authority that the Funding Agreement shall terminate on a date which is not less than the later of:
- 29.5.3 one month after the date of receipt of such notice; and
  - 29.5.4 the effective date of termination of the Funding Agreement as set out in a notice issued pursuant to the terms of the Funding Agreement.
- 29.6 The DFE shall procure that from the date the Authority receives notice under clause 29.5 until the date of termination of the Funding Agreement, the Authority shall continue to receive the DSG and the Academy Contribution in accordance with the terms of this Agreement and the School Agreement.
- 29.7 Following the issue of a notice by the DFE that the Funding Agreement will terminate, the parties shall co-operate fully to ensure the transfer of the responsibility for delivery of Educational Services to the Authority.
- 29.8 For the purpose of clause 29.3 and clause 29.7 above, the meaning of the term "**co-operate**" shall include the Academy:
- 29.8.1 liaising with the DFE, the Authority and/or any Approved Suitable Substitute, and providing reasonable assistance and advice concerning the responsibilities of the Academy under this Agreement, the Project Documents, the School

Agreement and the Lease and their transfer to the Authority or the Approved Suitable Substitute (as relevant);

29.8.2 allowing any Approved Suitable Substitute access (at reasonable times and on reasonable notice) to the School, but not so as to interfere with or impede the provision of the FM Services and/or Educational Services at the School;

29.8.3 providing to the Authority and/or to any Approved Suitable Substitute (as appropriate, but subject to any commercial confidentiality reasons) all and any information concerning the rights, obligations, liabilities, activities and responsibilities of the Academy at and in relation to the School and/or FM Services delivered by the Academy and/or the Provider as is reasonably required for the efficient transfer of rights, obligations, liabilities, activities and responsibilities from the Academy to the Authority or the Approved Suitable Substitute (as appropriate);

29.8.4 transferring its rights, title and interest in and to any Relevant Assets to the Authority immediately upon termination, or (where relevant) to the Approved Suitable Substitute with effect on and from the date the DFE and the Approved Suitable Substitute Academy enter into a funding agreement.

29.9 Where the responsibility for the provision of the Educational Services at the School reverts to the Authority pursuant to clause 29.7, this Agreement and the School Agreement and the Lease shall terminate (subject to any provisions which are expressed to survive termination). The Authority shall at any time after receipt of notice of termination of the Funding Agreement be permitted to apply to the DFE for revenue grant in respect of pupils at the School. The DFE shall (acting reasonably) consider the Authority's application for such funding and any such decision of the DFE shall not be unreasonably withheld or delayed.

## **30 ASSIGNMENT**

### **30.1 Assignment by DFE**

30.1.1 Subject to clause 30.1.2 and 30.2.3, the rights and obligations of DFE under this Agreement and the School Agreement shall not be assigned, novated or otherwise transferred other than to any person (being a single entity) having the legal capacity, power and authority to become a party to and perform the obligations of DFE under this Agreement and the School Agreement being a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975.

30.1.2 Any assignment pursuant to clause 30.1.1 may only be to an assignee which has substantially the same responsibilities for education services.

### **30.2 Assignment by the Authority**

30.2.1 Without prejudice to clause 22, and subject to clause 30.2.2 and 30.2.3, the rights and obligations of the Authority under this Agreement, the School Agreement and the Lease shall not be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement, the School Agreement and the Lease being:

30.2.1.1 a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975; or

30.2.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement, the School Agreement and the Lease.

30.2.2 Any assignment pursuant to clause 30.2.1 may only be to an assignee which has substantially the same responsibilities in the Area for Educational Services.

30.2.3 The Authority shall assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any person to which the Authority assigns, novates or otherwise transfers its rights and/or obligations under the Project Agreement in accordance with clause 68.1 (Restriction on the Authority) of the Project Agreement

### 30.3 **Assignment by the Academy**

The rights and obligations of the Academy under this Agreement, the School Agreement and the Lease may be novated or assigned in accordance with the terms of this Agreement and the School Agreement but not otherwise.

## 31 **DISPUTE RESOLUTION**

### 31.1 **Disputes**

Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 31.

### 31.2 **Consultation**

If a dispute arises in relation to any aspect of this Agreement, the relevant parties to the dispute shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

31.3 Any dispute not capable of resolution by the parties to the dispute in accordance with the terms of clause 31.2 shall be escalated so that the matter is considered by senior representatives of the relevant parties.

31.4 If the dispute remains not capable of resolution following escalation pursuant to clause 31.3, it shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution ("**CEDR**") model mediation procedure.

31.5 No party to the dispute may commence any court proceedings/adjudication in relation to any dispute arising out of this Agreement until they have attempted to settle it by mediation, but any such mediation may be terminated by any party to the dispute at any time of such party wishing to commence court proceedings/adjudication.

31.6 The parties to the dispute will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and such parties will pay his costs, as he shall determine.

### 31.7 **Adjudication**

If the relevant parties to the dispute fail to resolve the dispute through such consultation or mediation, any party to the dispute may refer the matter to an adjudicator selected in accordance with clause 31.8 (Identity of Adjudicator) ("**Adjudicator**").

### **31.8 Identity of Adjudicator**

The Adjudicator nominated to consider a dispute referred to him shall be wholly independent of the relevant parties to the dispute and shall be selected in accordance with the following:

31.8.1 the nominee shall be an expert on matters of schools funding, being a qualified lawyer or accountant with not less than ten (10) years' experience in the field; and

31.8.2 if the relevant parties to the dispute are unable to agree on the identity of the Adjudicator, the President for the time being of the Chartered Institute of Arbitrators shall appoint such Adjudicator within twenty (20) Business Days of any application for such appointment by the relevant party.

### **31.9 Submission of arguments**

Within five (5) Business Days of nomination in relation to a particular dispute, the Adjudicator shall require the parties in dispute to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

### **31.10 Adjudicator's decision**

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) Business Days of the Adjudicator's nomination to consider the relevant dispute (or such other period as the parties may agree after the reference) or thirty (30) Business Days from the date of reference if the party which referred the dispute agrees. The Adjudicator's decision shall not state any reasons for his decision. Unless and until revised, cancelled or varied by the English courts, the Adjudicator's decision shall be binding on all parties to the dispute who shall forthwith give effect to the decision.

### **31.11 Adjudicator's costs**

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties to the dispute. Each party to the dispute shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

### **31.12 Adjudicator as expert**

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

### **31.13 Adjudicator's powers**

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.

### **31.14 Confidentiality**

All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 32.2 (Confidentiality) or clause 32.3 (Freedom of Information), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall

remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

### **31.15 Liability of Adjudicator**

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

### **31.16 Reference to the courts**

If:

31.16.1 any party to the dispute is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 31.10 (Adjudicator's decision); or

31.16.2 all relevant parties agree,

then any party to the dispute may (within twenty (20) Business Days of receipt of the Adjudicator's decision), notify the other parties to the dispute of its intention to refer the dispute to the courts.

### **31.17 Parties' obligations**

The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 31 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause 31.

## **32 MISCELLANEOUS**

### **32.1 The Authority's statutory authority**

Nothing in this Agreement shall be construed as a fetter or restriction on the exercise of the Authority's planning or highways functions nor, without prejudice to the rights and remedies of the DFE and the Academy under this Agreement, or the exercise of any other statutory function by or on behalf of the Authority.

### **32.2 Confidentiality**

32.2.1 No party to this Agreement shall publish or cause to be published or communicate to any third party any matter relating to this Agreement except with the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed).

32.2.2 Each party shall comply with their duties and responsibilities under the Data Protection Act 1998 in the performance of this Agreement and shall not unlawfully process or disclose information subject to that Act.

### **32.3 Freedom of Information**

The parties agree that they will each cooperate with one another to the extent they are legally entitled to do so to enable any party receiving a request for information under the Freedom of Information Act 2000 to respond to that request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other parties as appropriate and responding to any requests by the party receiving a request for comments or other assistance.

## 32.4 Notices

32.4.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, leaving the same at:

If to DFE: Director of Academies;  
Academies Group  
Department for Education  
Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

Fax No. 020 7925 7352

If to the Authority: [address - Authority to confirm]

[Fax No:]

If to the Academy: [address - Academy to confirm]

[Fax No:]

32.4.2 Any party to this Agreement may change its nominated address or facsimile number by prior notice to the other party.

32.4.3 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

32.4.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9.00am and 4.00pm; or

32.4.3.2 by 11.00am on the next following Business Day, if sent after 4.00pm, on a Business Day but before 9.00am on that next following Business Day.

## 32.5 Amendments

This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of all the parties to this Agreement.

## 32.6 Waiver

Any relaxation, forbearance, indulgence or delay (together "**Indulgence**") of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that party or any other person).

## 32.7 No agency

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between any of the parties. Save as expressly provided otherwise in this

Agreement, no party shall be, or be deemed to be, an agent of another party and shall not hold itself out as having authority or power to bind another party in any way.

### **32.8 Entire agreement**

32.8.1 Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

32.8.2 Each of the parties acknowledges that it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement.

### **32.9 Severability**

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

### **32.10 Counterparts**

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Agreement for all purposes.

### **32.11 Costs and expenses**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

### **32.12 No privity**

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement except for any person to whom the benefit of this Agreement is assigned or transferred in accordance with the terms of this Agreement.

### **32.13 Interest on late payment**

Save where otherwise specifically provided, where any payment or sum of money due from one party to another under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment.

### **32.14 Mitigation**

The parties shall at all times take all reasonable steps to minimise and mitigate any loss for which they are entitled to bring a claim (including but not limited to any indemnity) pursuant to this Agreement and to take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under

this Agreement which would otherwise entitle that party to relief and/or to claim compensation hereunder.

**32.15 No double recovery**

Notwithstanding any other provisions of this Agreement, no party shall be entitled to recover compensation or to make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement, the School Agreement, the Project Documents or otherwise.

**32.16 Further assurance**

All parties shall do all things and execute all further documents necessary to give full effect to this Agreement.

**32.17 Governing law and jurisdiction**

32.17.1 This Agreement and any non-contractual obligation arising out of or in connection with it is subject to the laws of England and Wales.

32.17.2 Subject to the provisions of clause 31 (Dispute Resolution), the parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

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

**EXECUTED** as a deed (but not delivered until the date hereof) by affixing the common seal of **THE COUNCIL OF THE CITY OF COVENTRY** in the presence of:

-----  
Authorised Officer

**THE CORPORATE SEAL of the SECRETARY OF STATE FOR EDUCATION** hereunto affixed was authenticated by:

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Authorised by the Secretary of State for Education

**SIGNED** as a deed by and on behalf of **[ACADEMY]** acting by:

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Authorised Representative

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Authorised Representative

## **SCHEDULE 1: INFORMATION PROTOCOL**

1. The parties recognise the benefit of cooperation and sharing of information as part of a prudent risk management strategy. Each Party shall notify the others of relevant timescales (contractual and non-contractual) to which it is bound or committed, and shall use reasonable endeavours to facilitate exchange of information in good time to meet such timescales.
2. The Authority shall provide to the DFE and the Academy (in each case solely in respect of matters affecting the Site and/or the School):
  - 2.1 promptly upon becoming aware of the same, details of any actual or potential claim made or potentially to be made against the Authority under the Project Documents relating to a liability which the Authority may seek to recover from the Academy or the DFE;
  - 2.2 on reasonable request, details of claims that the Authority is progressing under the Project Documents (irrespective of whether the claims are being made at the request of the Academy or the DFE);
  - 2.3 a copy of any Relevant Notice;
  - 2.4 details of any matter which may lead to an increase in the Academy Contribution including indexation, any benchmarking/market testing, any insurance costs review and any change in law; and
  - 2.5 such other information as the DFE or Academy may reasonably require.
3. The Authority shall provide to the Academy (in each case solely in respect of matters affecting the Site or the School):
  - 3.1 copies of insurance certificates obtained from the Provider and copies of insurance reports provided by the Provider as part of the insurance premia sharing mechanism under the Project Agreement;
  - 3.2 copies of performance reports received from the Provider pursuant to the relevant payment mechanisms;
  - 3.3 quarterly (or more regular by agreement of the parties) reports on instances of Authority Damage (as defined in the School Agreement) vandalism costs, together with details of the costs associated with the same and the proposed or agreed responsibility for such costs;
  - 3.4 copies of any survey reports obtained by the Authority having exercised its rights to require surveys pursuant to the Project Documents;
  - 3.5 copies of planned maintenance programmes provided to the Authority by the Provider pursuant to the Project Documents;
  - 3.6 notice of any intention on the part of the Authority to exercise its step in rights pursuant to the Project Documents;
  - 3.7 details of any information given to the Authority by the Provider under clause 5.2.1 of the Project Agreement.
4. The Academy shall provide to the Authority and to the DFE, promptly upon becoming aware of the same, details of any actual or potential claim made or potentially to be made against the Authority under the Project Documents.
5. The Academy shall provide to the Authority:
  - 5.1 details of any breaches of the Project Documents by the Provider not addressed by the relevant payment mechanisms of which it is aware;

- 5.2 details of any grounds to exercise rights or remedies in favour of the Authority under the Project Documents of which it is aware;
  - 5.3 details of any instances of damage to the Site or the School of which it is aware, together with details of any contact with the Provider it has in respect of the same.
6. A party providing information pursuant to this schedule may require payment of its reasonable costs in providing such information where, acting reasonably, it believes it is appropriate to do so given the nature or volume of the information or requests for information, or any other relevant factors.

## SCHEDULE 2: AFFORDABILITY GAP AND ADJUSTMENTS RELATING THERETO

### Introduction

1. Any payments of sums equal to the Affordability Gap payable by the DFE pursuant to clause 23 shall be calculated in accordance with this schedule 2.

### Where the DSG *includes* pupils attending the School - recoupment model applies

2. Where the pupil number baseline of the Authority's allocation of DSG *includes* pupils attending the School (the "recoupment model"), the DSG will be calculated in accordance with the methodology that applies to all local authorities allocated DSG (but with recoupment applying), as determined by the Secretary of State, for the relevant Financial Year.
3. Where the Authority "delegates" the Affordability Gap and such sum is accounted for within the relevant School budget share (and is therefore subject to recoupment), the DFE shall, subject to paragraph 8, pay to the Academy a sum equal to the Affordability Gap as part of the General Annual Grant or Earmarked Annual Grant. The parties agree that the Academy shall promptly pay such sum to the Authority pursuant to the terms of the School Agreement.
4. The parties agree that the recoupment model for calculating DSG shall apply until such time as this practice ends or is amended.

### Where the DSG *excludes* pupils attending the School - no recoupment model applies

5. Where the pupil number baseline of the Authority's allocation of DSG *excludes* pupils attending the School (the "no recoupment model"), the DSG will be calculated in accordance with the methodology that applies to all local authorities allocated DSG, as determined by the Secretary of State, for the relevant Financial Year, plus the Affordability Gap as calculated by the Authority (in accordance with paragraph 8) for the Financial Year in question.

### General

6. In any Financial Year where the School operated by the Academy is open for less than 12 months the value of the Affordability Gap will be reduced commensurately.
7. The amounts payable under this schedule shall only be payable from the date of this Agreement.
8. The Authority shall act reasonably when undertaking calculations of the Affordability Gap and the Affordability Gap, and shall on request provide in good faith all relevant information in its possession to the DFE necessary to calculate the DSG for the relevant Financial Year which, for the avoidance of doubt, shall include:
  - 8.1 the projected Unitary Charge;
  - 8.2 details of the Affordability Gap and how it is proposed to be apportioned to the School, if applicable;
  - 8.3 the details of any sums received pursuant to the Promissory Note; and
  - 8.4 the projected allocation of the DSG for each school which is the subject of the Project Agreement.
9. DFE shall provide at least one (1) months written notice to the Authority of the proposed date of grant of the DSG and shall provide to the Authority any information reasonably required by the Authority in connection with the DSG.
10. In this schedule, "Financial Year" means a period of 12 months commencing on 1 April provided that the first Financial Year shall be the period commencing on the date of opening of the School operated by the Academy and ending on the immediately following 31 March.

**DATED \_\_\_\_\_ 2012**

**(1) THE COUNCIL OF THE CITY OF COVENTRY**

**and**

**(2) COVENTRY EDUCATION PARTNERSHIP LIMITED**

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**DEED OF VARIATION**

**relating to the transfer to academy status of Caludon Castle School**

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THIS DEED is made on

2012

**BETWEEN:**

- (1) **THE COUNCIL OF THE CITY OF COVENTRY**, Council Offices, Earl Street, Coventry CV1 5RR (the **Authority**); and
- (2) **COVENTRY EDUCATION PARTNERSHIP LIMITED**, a company incorporated in England and Wales (company number 5188350) with its registered address at 3rd floor Braywick Gate, Braywick Road, Maidenhead, Berkshire SL6 1DA (the **Provider**).

**WHEREAS:**

- (A) By an agreement dated 7 December 2004 between the Authority and the Provider (the "**Project Agreement**"), the Provider was appointed to carry out, *inter alia*, certain works and provide certain services at Caludon Castle school under the Coventry Schools PFI project (the "**Project**").
- (B) The Authority and the Provider agreed an amendment to the Project Agreement dated on or about 5 November 2010 in respect of the construction of an extended learning centre.
- (C) The parties acknowledge Caludon Castle school shall convert to academy status [on or about the date of this Deed][on •] and from the date of such conversion (the **Conversion Date**) an academy known as Caludon Castle School, a company limited by guarantee with company number • and whose registered office is at Axholme Road, Wyken, Coventry CV2 5BD, (the **Academy Trust**) will deliver Educational Services to the relevant School.
- (D) The Authority and the Provider have agreed to amend the provisions of the Project Agreement to document, *inter alia*, the change to the organisational arrangement of the School as specified in Recital (C) on the terms set out herein.
- (E) The document attached as the Schedule to this Deed incorporates the variations which the Authority and the Provider have agreed to make in relation to the Project Agreement
- (F) The parties intend that this Deed be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

**NOW THIS DEED WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 All words and expressions as defined in or to be construed in accordance with the Project Agreement shall have the same meaning and construction when used in this Deed unless otherwise defined.
- 1.2 In this Deed except where the context otherwise requires:
  - 1.2.1 The masculine includes the feminine and vice-versa;
  - 1.2.2 The singular includes the plural and vice versa;
  - 1.2.3 A reference to any clause is, except where expressly stated to the contrary, a reference to such clause of this Deed;
  - 1.2.4 Save where stated to the contrary, any reference to this Deed or to any other document shall include any permitted variation, amendment, supplement, substitution, novation or assignment to such document from time to time;
  - 1.2.5 Headings are for convenience of reference only and are not to be taken into account in the construction or interpretation of the clause to which they refer;
  - 1.2.6 All persons who are not a party to this Deed are third parties.

**2. VARIATION OF THE PROJECT AGREEMENT**

- 2.1 This Deed is supplemental to the Project Agreement.
- 2.2 The Authority and the Provider agree that from and including the Conversion Date the provisions of the Project Agreement shall be varied and/or supplemented on the terms set out in the Schedule to this Deed.
- 2.3 For the avoidance of doubt, clause 1 above applies to the definitions, the operative provisions in, and the schedules to, this Deed and the Project Agreement.
- 2.4 Save as expressly varied and/or supplemented by the provisions of this Deed, the Project Agreement shall continue in full force and effect and the terms of the Project Agreement shall have effect as though the provisions contained in this Deed had from the Conversion Date been contained in the Project Agreement (save in the case of the amendment to the definitions of "Core Hours" and "School Day", which shall be deemed to have taken effect from 1 November 2008). In the event of any conflict between the provisions of this Deed and the Project Agreement, the provisions of this Deed shall prevail.
- 2.5 The Parties do not intend that any term of this Deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or by any person who is not a party to this

Deed. A person who is not a party to this Deed shall have no right, including under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms, conditions or provisions.

- 2.6 The Certification Requirements are intended to and shall be satisfied by the Authority with respect to this Deed before the end of the period within which the Certification Requirements must be satisfied for this Deed to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.
- 2.7 The Contractor hereby consents to the issue by the Authority of a certificate under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Deed.
- 2.8 The relevant discharge terms within the meaning of section 6 of the Local Government (Contracts) Act 1997 are as set out in clause 2.9 below.
- 2.9 In the event of the making of a determination or order by a court on an application for judicial review or an audit review, the result of which is that:
- 2.9.1 both the Project Agreement and this Deed do not have effect or are otherwise unenforceable, the relevant discharge terms (within the meaning of Section 6 of the Local Government (Contracts) Act 1997) in relation to this Deed shall be the relevant discharge terms under [Schedule [ ] (Relevant Discharge Terms)] of the Project Agreement (which shall apply without double counting to both this Deed and the Project Agreement); or
- 2.9.2 this Deed does not have effect or is otherwise unenforceable (but the Project Agreement continues to have effect and be enforceable), the relevant discharge terms (within the meaning of Section 6 of the Local Government (Contracts) Act 1997) in relation to this Deed shall be the same as the terms that would apply if section 7(2) of the Local Government (Contracts) Act 1997 had application in respect of this Deed.
- 2.10 The Authority and the Provider agree that:
- 2.10.1 the Authority shall be entitled as from and including the Conversion Date to grant a lease of the Site to the Academy Trust subject always to the rights of access granted to the Provider and the Provider Related Parties under clause 8 of the Project Agreement, and the Provider agrees that such grant shall not of itself constitute a breach by the Authority of the Project Agreement and that such grant is permitted under the Project Agreement;
- 2.10.2 the Academy Trust shall from the beginning of the Conversion Date be included as a co-insured party on the relevant insurance policies procured by the Provider

in accordance with clause 62.1 (Requirement to maintain) and Schedule 9 (Part 2) of the Project Agreement together with the benefit of non-vitiation protection in respect of any claim made by the Academy Trust and the benefit of a waiver of the insurer's subrogation rights against the Academy Trust, its employees and agents in accordance with clause 62.3 (Nature of the insurances) of the Project Agreement; and

- 2.10.3 closure of Caludon Castle school and opening of an academy shall not constitute a breach of the Project Agreement, nor an Authority Default.
- 2.11 The Authority hereby approves the amendments made to the Sub-Contracts that are consequential upon the amendments to the Project Agreement set out in this Deed and waives the obligation pursuant to Clause 7.1 (Ancillary Documents) of the Project Agreement for such amendments to be submitted for review under the Review Procedure.
- 2.12 This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
- 2.13 If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the other provisions of or any other documents referred to in this Deed.
- 2.14 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, construed and interpreted in accordance with, English law.

## SCHEDULE

### PART A - AMENDED TERMS

1. In Clause 1.1 (Definitions) of the Project Agreement the term "**Authority Related Party**" shall be amended to include the following additional sub-paragraph:  
  
    “(f) the Academy Trust and any Academy Trust Related Party.”
2. In Clause 1.1 (Definitions) of the Project Agreement the term "**Core Hours**" shall be amended to read as follows:  
  
    “means the hours from 0730 to 1800 each Monday to Friday during Term”
3. In Clause 1.1 (Definitions) of the Project Agreement the term "**Prohibited Act**" shall be amended to read as follows:

- “(a) offering, giving or agreeing to give to any servant of the Authority or the Academy Trust any gift or consideration of any kind as an inducement or reward:
- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority or the Academy Trust; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority or the Academy Trust;
- (b) entering into this Agreement or any other contract with the Authority or the Academy Trust in connection with which commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (c) committing any offence:
- (i) under the Prevention of Corruption Acts 1889-1916;
  - (ii) under Legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority or the Academy Trust; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority or the Academy Trust.”

4. In Clause 1.1 (Definitions) of the Project Agreement the term “**School Day**” shall be amended to read as follows:

“means 0730 to 1800 each Monday to Friday during any of the Terms (including days set aside for teacher training)”

5. Amend **clause 61.1** (Provider’s indemnity) to read as follows:

“61.1 Provider’s indemnity

The Provider shall, subject to clause 61.2 (Provider not Responsible), be responsible for, and shall release and indemnify the Authority, the Academy Trust and each of their employees, agents and contractors on demand from and against all liability for:

61.1.1 death or personal injury;

61.1.2 loss of or damage to property excluding the land and buildings (including property belonging to the Authority or the Academy Trust or for which either is responsible);

61.1.4 breach of statutory duty; and

61.1.5 third party actions, claims and/or demands, including costs, charges and expenses (including legal expenses on an indemnity basis) arising as a result thereof,

which may arise out of, or in consequence of, the design, construction, operation, maintenance of the New Facility by the Provider or the performance or non-performance by the Provider of its obligations under this Agreement or the presence on the Authority's and/or the Academy Trust's property of the Provider or any Provider Related Party in connection with the Works or the Services."

6. In **clause 61.2.1** (Provider not Responsible), insert the following after the word "Authority" on the first line:

"or any Authority Related Party"

7. Not used

8. In **clause 61.3** (Authority's Indemnity) insert the following after "Authority" on the eighth line:

"or the Academy Trust"

9. In **clause 62.3.1** (Nature of Insurances) after the words, "the Authority", insert the following:

"or the Academy Trust"

10. In **clause 62.3.2** (Nature of Insurances), delete and replace with the following:
- “contain a clause waiving insurers’ subrogation rights against the Authority, the Academy Trust, their employees and agents (except in the event of the Authority, the Academy Trust, their employees and agents having caused or contributed to the occurrence or claim through committing fraud, deliberate misrepresentation, deliberate non-disclosure or breach of a material policy condition)”
11. In **clause 62.4** (Evidence of Policies) after the words, “the Provider shall provide the Authority”, insert the following:
- “, the Academy Trust and the Academy Trust Trustees”
12. In **clause 62.5** (Renewal of Certificate) after the words, “forwarded to the Authority”, insert the following:
- “, the Academy Trust and the Academy Trust Trustees”
13. In **Schedule 9 (Insurances)**, in the schedule of Insured parties, insert a new limb (i) as follows:
- “(i) the Academy Trust.”
14. In section 1 (Property “All Risks” Insurance) of Part 2 (Services Period) of **Schedule 9 (Insurances)** amend “Insured Parties” to read as follows:
- “As in sub-paragraphs (a), (b), (e), (g) and (i) of the Schedule of Insured parties.”
15. In section 3 (Public/Products Liability insurance) of Part 2 (Services Period) of **Schedule 9 (Insurances)** amend “Insured Parties” to read as follows:
- “As in sub-paragraphs (a), (b), (e), (g), (h) and (i) of the Schedule of Insured parties.”

## **PART B - NEW TERMS**

16. In **Clause 1.1** (Definitions) of the Project Agreement the following new definitions shall be inserted:

“**Academy**” shall mean the academy at which the Academy Trust is to provide Educational Services at the Site of the School know, at the date of this Agreement, as Caludon Castle school;

“**Academy Trust**” shall mean the academy known as Caludon Castle School, a company limited by guarantee with **company number** and whose registered office is at Axholme Road, Wyken, Coventry CV2 5BD;

“**Academy Trust Related Party**” shall mean:

- (a) a member, officer, agent or employee of an Academy Trust acting in the normal course of his/her office or employment;
- (b) any trustee or director of the Academy Trust acting as such, or any person employed by the Academy Trust to work at the Academy acting in the normal course of his/her employment;
- (c) in relation to the Site, at those times in respect of those parts of the Site as set out in Schedule 14 for which the responsibility is stated to be that of the Authority, any pupil registered at the School or any person visiting the School at the invitation (express or implied) of the Academy Trust (which for the avoidance of any doubt shall include any person using that part of the New facility for the purpose of Community Use),

but excluding in each case the Provider and any Provider Related Parties.

“**Academy Trust Trustees**” means the directors and/or members of the Academy Trust.”

17. Insert a new **clause 1.2.11** as follows:

“1.2.11 Any reference to School or equivalent reference shall from **[insert transfer date]** be taken to be a reference to the Academy.”

18. Insert a new **clause 7.1B** as follows:

“7.1A Amendment to the FM Agreement

For the purposes of clause 7.1, the amendments required to the FM Contract as a consequence of the amendments made to the Project Agreement on or about **[insert**

the date of the deed of amendment to the PA] shall be deemed to have been submitted to the Authority's Representative for review under the Review Procedure and there shall be deemed to have been no objection in accordance with paragraph 3 of the Review Procedure within the time prescribed in clause 7.1 of this Agreement."

19. Insert a new **clause 61.12** as follows:

"61.12 Where the Academy Trust is entitled, in respect of an act or omission of the Provider or a Provider Related Party or a risk allocated to the Provider under the Project Agreement, to claim compensation from the Authority under any agreement with it and the Authority subsequently makes a claim against the Provider under the terms of the Project Agreement in respect of the same act or omission or risk, the Provider waives any right to defend the Authority's claim on the ground that the Authority is only required to pay compensation to the Academy Trust under the agreement with it to the extent that the same is recoverable by the Authority from the Provider under the Project Agreement."

20. A provision to cover the PFI provider acting as agent for the academy serving of school meals to pupils and staff at the academy so as to maintain the current VAT position.

**IN WITNESS** whereof the parties have executed this agreement as a Deed on the date first before written.

**THE COMMON SEAL** of            )  
**THE COUNCIL OF THE CITY OF**    )  
**COVENTRY**                        )  
was hereunto affixed            )  
in the presence of:             )

Authorised Officer

**EXECUTED** as a **DEED** by        )  
**COVENTRY EDUCATION**        )  
**PARTNERSHIP LIMITED**        )  
in the presence of:             )

Director

Director/Secretary/Witness

Name of witness

Address of witness

**CERTIFICATE ISSUED UNDER SECTION 3 OF THE LOCAL GOVERNMENT (CONTRACTS) ACT 1997 (THE "1997 ACT") IN CONNECTION WITH A DEED OF VARIATION TO A PROJECT AGREEMENT**

This certificate is issued by the Council of the City of Coventry (the "Authority") under section 3 of the 1997 Act in respect of a deed of variation dated on or around the date of this certificate and entered into between (1) the Authority and (2) Coventry Education Partnership Limited (the "Provider") (the "Deed of Variation"), which relates to a project agreement dated 7th December 2004 between the Authority and the Contractor for the design, construction and financing of Caludon Castle (the "School") and the provision of certain services at that school (as such project agreement may have been varied or amended from time to time) (the "Project Agreement").

**1. PERIOD OF CONTRACT – SECTION 3(2)(a) OF THE 1997 ACT**

The Deed of Variation is to operate for the period from its date until the Expiry Date as defined in the Project Agreement or (subject to survivorship provisions) the earlier termination of the Project Agreement in accordance with its terms.

**2. PURPOSE OF THE CONTRACT – SECTION 3(2)(b) OF THE 1997 ACT**

2.1 The purpose of the Deed of Variation is (inter alia) to:

2.1.1 set out certain acknowledgements by the parties to it; and

2.1.2 make a number of amendments to the Project Agreement,

which are in respect of, or incidental to, the School, or school replacing it, opening as an academy pursuant to the Academies Act 2010 (as amended), such academy to be managed and operated by [ ] (a company limited by guarantee)] (the "Academy Trust").

2.2 The amendments referred to in paragraph 2.1.2 above include:

2.2.1 making provision for the Academy Trust to be covered by certain of the project insurances provided for in the Project Agreement;

2.2.2 ensuring that the School, the Academy Trust (and relevant entities it is responsible for) are deemed to be Authority Related Parties for the purposes of the Project Agreement.

2.2.3 making provision for the Authority to grant a lease of site to the Academy Trust and that such grant shall not constitute a breach by the Authority of the Project Agreement and that such grant is permitted under the Project Agreement

2.2.4 making provision that the closure of the School and the opening of an Academy shall not constitute a breach of the Project Agreement or an Authority Default

**3. CONTRACT TYPE – SECTION 3(2)(c) OF THE 1997 ACT**

The Deed of Variation is a contract falling within Section 4(3) of the 1997 Act.

**4. POWERS TO ENTER INTO THE CONTRACT – SECTION 3(2)(d) OF THE 1997 ACT**

The Authority has power to enter into the Deed of Variation and the statutory provisions conferring the power are:

4.1 sections 16(1)(c) and 579(5) of the Education Act 1996;

4.2 sections 2(1) and 2(4) of the Local Government Act 2000;

4.3 section 1(1) of the 1997 Act; and

4.4 section 111(1) of the Local Government Act 1972.

**5. COPIES OF THE CERTIFICATE – SECTION 3(2)(e) OF THE 1997 ACT AND REGULATIONS 3 AND 4 OF THE LOCAL AUTHORITIES (CONTRACTS) REGULATIONS 1997**

A copy of the certificate has been or is to be given to the Provider, the monitoring officer of the Authority and the auditor of the Authority under Regulations 3 and 4 of the Local Authorities (Contracts) Regulations 1997.

**6. MATTERS TO BE DEALT WITH IN THE CERTIFICATE – SECTION 3(2)(f) OF THE 1997 ACT AND REGULATION 6 OF THE LOCAL AUTHORITIES (CONTRACTS) REGULATIONS 1997**

The statutory provisions conferring the main relevant functions which the Deed of Variation is calculated to facilitate, or is conducive or incidental to, the discharge of, are:

- 6.1 section 13(1) of the Education Act 1996;
- 6.2 section 14 of the Education Act 1996;
- 6.3 sections 16(1)(c) and 579(5) of the Education Act 1996; and
- 6.4 sections 2(1) and 2(4) of the Local Government Act 2000.

**7. REQUIREMENTS WITH RESPECT TO THE ISSUE OF THE CERTIFICATE – SECTION 3(2)(g) OF THE 1997 ACT**

The Authority has complied with or is to comply with any requirement imposed by regulations with respect to the issue of this certificate under section 3 of the 1997 Act (including the requirements of the Local Authorities (Contracts) Regulations 1997 (as amended)).

**CONSENT OF THE OTHER PARTIES TO THE CONTRACT – SECTION 3(4) OF THE 1997 ACT**  
The Authority and the Provider are the only parties to the Deed of Variation and the Contractor has consented to the issue of this certificate under section 3 of the 1997 Act.

**8. SIGNATURE – SECTION 3(3) OF THE 1997 ACT AND REGULATION 7 OF THE LOCAL AUTHORITIES (CONTRACTS) REGULATIONS 1997**

Signed .....

Name:

Title:

[            ]

Dated .....

Copies to:

- The Contractor
- The Authority's Monitoring Officer
- The Authority's Auditor