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| Dated  2016 |
| (1) **CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL**(2) **THE GOVERNING BODY OF** (3)  |
| TRANSFER AGREEMENT |
| relating to the transfer of assets, contracts and staff of from the City of Bradford Metropolitan District Council to . |

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**BETWEEN**

(1) **CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** of City Hall, Bradford BD1 1HY (the “**Council**”); and

(2) **THE GOVERNING BODY** of (the “**Governing Body**”);

(3) a company limited by guarantee In England and Wales(Company Number whose registered office is at ) (the “**Company**”).

**BACKGROUND**

(A) The Council will cease to operate the School from the Transfer Date and the Company will, from the Transfer Date, operate the Academy on the same site as the School.

(B) The freehold of the School site 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. INTERPRETATION

1.1 In this Agreement the following words shall have the following meanings: -

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| **“Academy”** | means the academy to be run by the Company on the site of the School under the proposed name ; |
| **“Additional Contract”** | means a contract entered into by or on behalf of the Council (including by the School in its own name or as agent for the Council) in the ordinary and proper cause of operating the School which is unperformed (wholly or partly) as at the Transfer Date and which is not included in the Contracts List set out in Schedule 2 and which is not an Excluded Contract; |
| **“Archive Transaction Cost”** | means the cost to the Council of retrieving any Records from offsite storage; |
| **“Asset Register ”** | means the list of assets set out at Schedule 2; |
| **“Assets”** | means all the property, undertaking, rights and assets of the School whether tangible or intangible, of whatever nature used or held by the School, the Council, and/or Governing Body, for the purposes of the School, including those, but not limited to those, specified or referred to in clause 7.1 including, without limitation, those assets set out on the Asset Register in Schedule 2, but excluding those listed in Schedule 4 (Excluded Assets); |
| **“Business Day”** | means any day (other than Saturday or Sunday) on which a bank which is a member of CHAPS Clearing Company Limited is open for a full range of banking transactions; |
| **“Compensation Regulations”** | means the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (SI2006/2914); |
| **“Computer Systems”** | means all computer hardware, software, micro processor, and any other items that connect with any of them which in each case are owned by the Governing Body; |
| **“Contracts”** | means any contracts (including any collateral warranties, guarantees, bonds and third party rights in favour of the Council and/or the Governing Body entered into by the Council and/or the Governing Body (as the case may be) for the purpose of operating the School in the ordinary course of business which are still in force at the Transfer Date, including but not limited to:(i) contracts, collateral warranties, guarantees, bonds and third party rightsrelating to building, improvement, maintenance or other works of the land and buildings on the site of the School;(ii) any collateral warranties, guarantees, bonds and third party rights in favour of the Council and/or the Governing Body; and(iii) those contracts listed in Schedule 3 and where such contract was entered into by the Council and relates to other schools operated by the Council as well as the School then only such part of that contract as relates to the School, in each case excluding the Excluded Contracts; |
| **“Data Protection Legislation”** | means the Data Protection Act 1998 (“DPA”), and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable, the guidance and codes of practice issued by the Information Commissioner; |
| **“DfE”** | means the Department for Education or such successor government department as may assume responsibility for the exercise of the same or similar functions from time to time. |
| **“Directive”** | means the Safeguarding of Employees Directive (2001/23/EC) (as amended, re-enacted or extended from time to time); |
| **“Eligible Employees”** | means the Transferring Employees who are active members of or eligible to join either the LGPS or the TPS immediately before the Transfer Date; |
| **“Employee Liability Information”** | means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of the Regulations; |
| **“Excluded Assets”** | means the assets described in Schedule 4 which are excluded from the transfer effected by this Agreement; |
| **“Existing School Site”** | means the site and premises at ; |
| **“Funding Agreement”** | means a funding agreement to be entered into between the Secretary of State for Education and the Company with regard to funding arrangements for the Academy; |
| **“Governing Body”** | means the Governing Body from time to time of the maintained school known as ; |
| **“Information”** | means all information (except information in relation to which the Council is under any confidentiality restriction and in whatever form held) required in relation to (i) operating all or any aspects of the School and its Assets and (ii) the operation, management, administration or financial affairs of the School (including plans and forecasts); |
| **“Intellectual Property Rights”** | means patents, rights to inventions, utility models, copyright, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;  |
| **“the LGPS”** | means a Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as from time to time amended; |
| **“LGPS Admin Regs”** | means the Local Government Pension Scheme (Administration) Regulations 2008 (SI2008/239); |
| **“LGPS Regulations”** | means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525) as from time to time amended; |
| **“Loss”** | means actions, proceedings, losses, damages, awards, orders, liabilities (including any liability to taxation), claims, costs, demands and expenses, including fines, penalties, reasonable legal and other professional fees and expenses and “Losses” shall be construed accordingly; |
| **“Personnel Files”** | means the personnel files or records in respect of each of the Relevant Employees which include all disciplinary, appraisal, attendance information and all other employment related information relating to the Relevant Employees which is in the possession of the Council and which the Council can lawfully pass to the Company; |
| **“the Regulations”** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time); |
| **“Relevant Employees”** | means those employees, workers and agency workers of the Governing Body and/or the Council and/or any of their sub-contractors or agents who are, or have at any time been, wholly or mainly assigned to the undertaking; |
| **“Rights”** | means the benefits of all rights, entitlements and claims (whether actual, prospective or contingent) to which the Council is entitled in relation to any Assets (including the benefit of any warranty, condition, guarantee, indemnity or policy of insurance) up to the Transfer Date and as of the Transfer Date; |
| **“School”** | means the existing school known as ; |
| **“School Fund”** | means the private and charitable school funds held in the following account:**Account Name:** **Sort Code:** **Account number**:   |
| **“School Records”** | means the following to the extent the same are in the possession and control of the Council and/or the School and/or Governing Body subject to any restrictions on records by virtue of any confidentiality restrictions to which the Council or the School or Governing Body is subject and may include records relating to every day school business such as minutes of meetings, policies and procedures : -1. (a) all education records including records of former pupils, not transferring to the Academy, such as attendance, performance and disciplinary records including personal information e.g. consent forms, medical information; correspondence including parent complaints, permission slips, reports and SEN statements in the possession of the Council at the time of the Transfer Date;
2. (b) all information held in relation to child protection such as child protection reports, disclosures, minutes of conferences, support plans and child protection plans;
3. (c) all data generated by the School such as staff, finance, admissions, class registers, accidents reports minutes of meetings, policies which are in the possession of the Council;
4. (d) any other records in the possession of the Council for the purpose of supporting pupils at the School in their education;
5. (e) personnel files in respect of former employees of the School, not transferring to the Academy, which include all disciplinary, appraisal, attendance information and all other employment related information relating to those employees not transferring which are in the possession of the Council and/or the School at the time of the Transfer Date.
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| **“Services”** | means the services responsibility for which shall transfer to the Company on the Transfer Date; |
| **“Software”** | means any form of computer program, including applications software and operating systems, whether in source or object code form used at the School subject to any applicable licence terms; |
| **"Surplus"** | means any surplus transferred to the Company from the Council and the Governing Body pursuant to the Academy Conversions (Transfer of School Surpluses) Regulation 2013; |
| **“the TPS”** | means the Teachers’ Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 9 and 12 of and Schedule 3 to the Superannuation Act 1972 as from time to time amended; |
| **“the TPS Regulations”** | means the Teachers’ Pension Regulations 2010 (2010/990) as amended from time to time; |
| **“Transfer Date”** | means ; |
| **“Transferring Employees”** | means any Relevant Employees who are employees of the Council / Governing Body and whose employment transfers to the Company on the Transfer Date pursuant to the Regulations and who are listed in Schedule 1; |
| **“Transferring Records”** | means each of the following to the extent the same are in the possession and control of the Council and/or the School and/or the Governing Body subject to any restrictions on records having transferred under legislation (including data protection) or by virtue of any confidentiality restrictions to which the Council or the School or Governing Body is subject: -1. (a) all attendance performance and disciplinary records and all schemes of work relating to pupils transferring to the Academy in the possession of the Council and which the Council can lawfully pass to the Company;
2. (b) all coursework for pupils currently at the School in the possession of the Council
3. (c) all text books and exercise books for pupils at the School in the possession of the Council
4. (d) all data produced in relation to the School or its pupils including (without limitation) reports and information prepared by the Office for Standards in Education, Children's Services and Skills (“Ofsted”) or the Fisher Family Trust or any other agency in the possession of the Council;
5. (e) all data generated by the Council regarding the setting of targets to the School and any reports associated therewith which have been made available to the Governing Body and which are in the possession of the Council;
6. (f) all passwords (whether online or otherwise) or codes which are necessary for the School to have access to and operate the Software and Computer Systems which are in the possession of the Council;
7. (g) all self evaluation forms completed by pupils of the School and records established in relation to these forms which are in possession of the Council;
8. (h) all data or records collected or established by the School analysing the gender, ethnicity and profile of the pupils;
9. (i) all data or records which is held by the School or the Council in relation to the Positive Cash Balances; and
10. (j) any other records in the possession of the Council which the Company may reasonably and lawfully require for the purpose of supporting pupils at the School in their education;
11.
12. (k) the personnel files in respect of each of the Transferring Employees which include all disciplinary, appraisal, attendance information and all other employment related information relating to the Transferring Employees which is in the possession of the Council and which the Council can lawfully pass to the Company;
 |
| **“Undertaking”** | 1. means any undertaking constituted by or contained within the School.
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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 references to a document being “in the agreed terms” will be construed as references to that document in the form agreed and initialled by or on behalf of the parties;

1.2.4 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

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

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

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

1.5 General words are not to be given a restrictive meaning because they are followed by particular examples, and any words introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms.

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

2. CONDITION PRECEDENT

2.1 This Agreement is conditional on the Funding Agreement being signed by the Company and the Secretary of State for Education on or before . In the event that the Funding Agreement is not signed by such date, this Agreement shall cease to have effect on .

3. OPERATION OF THE REGULATIONS

3.1 The parties intend and acknowledge that when the Council ceases to maintain the School the opening of the Academy shall constitute a relevant transfer to which the Directive and the Regulations apply and agree that as a consequence that the contracts of employment made between the current employer and the Transferring Employees (save insofar as such contracts relate to benefits for old age, invalidity, or survivors under any occupational pension scheme) shall have effect from and after the Transfer Date as if originally made between the Company or (as the case may be) a contractor and the Transferring Employees.

4. PROVISION OF INFORMATION

4.1 The Council shall notify the Company of any material change to the Employee Liability Information prior to the Transfer Date as soon as is reasonably practicable, and shall upon request by the Company meet the Company to discuss the information disclosed.

4.2 The Council undertakes to the Company, in respect of any Transferring Employees employed by the Council, that during the period from the date of this Agreement up to and including the Transfer Date:

4.2.1 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 Relevant Employees and their trade union or other employee representatives;

4.2.2 the Council and the Governing Body, shall not without the prior written consent of the Company:

(a) amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay and job description) of any Transferring Employees (other than where such amendment or variation has previously been agreed between the Council, Governing Body and the Transferring Employees in the normal course of business, and where any such amendment or variation is not in any way related to the transfer to the Company);

(b) terminate or give notice to terminate the employment or engagement of any Transferring Employees (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);

(c) employ or assign any person to the School who would or might as a consequence of such employment or assignment become a Transferring Employee;

5. TRANSFER OF EMPLOYEES

5.1 For the purposes of the Regulations and the Directive the transactions contemplated by this Agreement will involve a ‘relevant transfer’ of the undertaking of the School to the Company on the Transfer Date and accordingly it is acknowledged by all parties that with effect from and on the Transfer Date the contracts of employment of each of the Transferring Employees will have effect as if originally made between each of the Transferring Employees and the Company except to the extent provided by the Regulations.

5.2 Further, and in accordance with the Regulations and the Directive, on the Transfer Date, all the Council’s rights, powers, duties and liabilities under or in connection with any of the Transferring Employee’s contracts of employment shall be transferred by virtue of the Regulations to the Company.

5.3 The Council will inform the Company as soon as reasonably practicable after it becomes aware of any Relevant Employee giving notice to cease to be employed or ceasing to be employed prior to the Transfer Date.

5.4 If, (for whatever reason) the Regulations do not apply to any person who is a Transferring Employee, the Company shall offer to or shall use reasonable endeavours to procure the offer by a relevant sub-contractor to each and every such employee a new contract of employment to commence on the Transfer Date under which the terms and conditions including full continuity of employment shall not differ from those enjoyed immediately prior to the Transfer Date and the offer shall be made in writing, shall be open to acceptance for a period of not less than fourteen (14) Business Days and shall be made:

5.4.1 if it is believed that the Regulations will not apply to a person, not less than ten (10) Business Days before the Transfer Date; or

5.4.2 if it is believed that the Regulations apply to a person but it is subsequently decided that the Regulations do not so apply, as soon as it is reasonably practicable and in any event no later than ten (10) Business Days after that decision is known to the Company.

5.5 Where any such offer as referred to in clause 5.4 is accepted, the Company shall act and shall use reasonable endeavours to procure that each relevant sub-contractor shall act in all respects as if the Regulations had applied to each and every Transferring Employee who has accepted any such offer.

6. PENSIONS

6.1 The Company shall comply with its statutory obligations pursuant to Section 257 and 258 Pensions Act 2004

6.2 The parties acknowledge that the Company is a “scheme employer” for the purposes of paragraph 20 of Part 1 of Schedule 2 to the LGPS Regulations and the Company agrees that it shall comply with the provisions of the LGPS Regulations that apply to the Company (as the person carrying on the business of the Academy).

6.3 The parties acknowledge that the Company is a “contracting scheme employer” for the purposes of the TPS Regulations by virtue of Regulation 14B of the TPS Regulations and paragraph 2 of Part 1 of Schedule 2 to the TPS Regulations and that the TPS Regulations shall apply to the Company (as the person carrying on the business of the Academy).

6.4 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 either at the Academy or by the Company following the Transfer Date subject to the terms of the LGPS Regulations and the TPS Regulations.

6.5 The Company will comply with any duties which apply to it by virtue of the Pensions Act 2008.

6.6 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 and shall indemnify the Council against any Losses arising as a result of a failure by the Company to make any payments due under this clause (whether under regulation 64 of the Local Government Pension Scheme Regulations 2013 or otherwise).

6.7 The Company shall be responsible for all employer contributions payable to the LGPS (which, notwithstanding the generality of the foregoing, shall include any contributions payable under regulation 64 of the Local Government Pension Scheme Regulations 2013) and the TPS in respect of Transferring Employees and any other sum due to the LGPS and the TPS in respect of Transferring Employees and shall indemnify the Council against any Losses arising as a result of a failure by the Company make any payments due under this clause.

6.8 In the event that the Company is unable to comply with the provisions of clauses 6.2 or 6.3 as a result of a future direction or ruling from the DfE, it will comply with such obligations imposed on it by the DfE at that time in respect of the provision of pension arrangements for the Transferring Employees and all other employees employed by the Company in relation to the Academy on and from the Transfer Date, and it will provide for future service such benefits as are required by the DfE.

6.9 The Company acknowledges that as a scheme employer it has discretion to award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council; and

6.9.1 Where the award of benefits in clause 6.9 is not permitted under the Compensation Regulations and/or the LGPS Regulations or the Company is not a scheme employer the Company at all times acting reasonably shall consider awarding benefits to the Eligible Employees which are broadly comparable to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.

6.9.2 Under clause 6.9 and 6.9.1 where such benefits are of a discretionary nature, they shall be awarded on the basis of the Company’s written policy, a copy of which will be provided to the Council within 30 days of the execution of this Agreement. Where the payment of such benefits is not, for whatever reason, possible, the Company shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

6.10 Notwithstanding any other clause in this Agreement, in the event that the Company makes any decision in relation to any employee which results in such employee becoming entitled to early retirement or redundancy benefits by reference to that employee’s membership of the LGPS (whether or not such membership began or includes any period of membership or pensionable service completed prior to the Transfer Date), the Company shall be wholly liable for meeting the cost of providing those benefits.

6.11 Save on expiry or termination of this Agreement, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under the Regulations) the Company shall and shall procure that any relevant contractor or sub-contractor shall provide such pension provision as a best value authority would be required to provide under the terms of The Best Value Authorities Staff Transfers (Pensions) Direction 2007 as if that direction applied to the Company or relevant contractor/sub-contractor as an “authority”.

6.12 The Company shall: -

6.12.1 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;

6.12.2 promptly provide 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

6.12.3 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.

7. TRANSFER OF ASSETS

7.1 On the Transfer Date, the Council and/or the Governing Body (as applicable) will transfer and the Company will acquire the Council’s title, rights and interest in the following Assets free of charge, subject to the provisions of this Agreement: -

7.1.1 Transferring Records;

7.1.2 Computer Systems;

7.1.3 subject to clauses 8 and 9 the Contracts;

7.1.4 fixed and loose plant, furniture, machinery and equipment, fittings and other chattels (including without limitation, office equipment) used in connection with the School or located at the Existing School Site);

7.1.5 the benefit of all rights and entitlements in relation to any Assets (including without limitation the benefit of any warranty, condition or guarantee);

7.1.6 Software;

7.1.7 Intellectual Property Rights;

7.1.8 such other assets (if any) as may be agreed between the Company and the Council and are notified to the Council in writing by the Company no later than 3 Business Days prior to the Transfer Date;

7.1.9 the School Fund;

7.1.10 all (if any) other assets, property or rights owned by the Council and relating to the School including, without limitation, those assets set out in the Asset Register Schedule 2.

7.2 The Council and the Company agree to work together in good faith to achieve a smooth transition which best meets the needs of students transferring from the School to the Academy. The Council and the Company will continue to cooperate through a series of exchanges of information and data so as to achieve an orderly transition, including, without limitation:

7.2.1 subject to due compliance with the Data Protection Act 1998 the Council will make available to the Company such student data as it may reasonably require in connection with the establishment of the Academy and the Company will keep such data confidential and will use it only for the purpose stated in clause 7.2

7.3 Title to and risk in the Assets shall pass to the Company on the Transfer Date provided always that the Council will have no liability to the Company in relation to the condition of the Assets transferred beyond that in clause 9 below.

7.4 The Company shall have responsibility for the operation of the Academy from the Transfer Date and warrants to comply with the terms of the Funding Agreement. The Council shall have no further obligation in terms of the operation of the School from the Transfer Date, subject to any provisions to the contrary in this Agreement.

8. CONTRACTS

8.1 Subject to the provisions of clause 9 and the other provisions of this clause 8, the Company will, with effect from the Transfer Date, assume the obligations of the Council, and become entitled to the benefits to which the Council was previously entitled, under the Contracts provided in Schedule 3 however for the avoidance of doubt any Excluded Contracts listed in Schedule 4 will not, under any circumstances, transfer to the Company.

8.2 The Council and/or Governing Body (as applicable) hereby assigns to the Company with effect from the Transfer Date all its rights, title and interest under or pursuant to all the Contracts which are capable of assignment or attempted assignment without the consent of other parties.

8.3 In so far as a Contract cannot be transferred without the consent of a third party or a novation agreement:

8.3.1 this Agreement does not constitute an assignment or an attempted assignment of the Contract if such assignment or attempted assignment would constitute a breach of the Contract;

8 3.2 the Council will, as requested by the Company, use all reasonable endeavours (with the co-operation of the Company) to procure such consent or novation.

8.4 Unless and until such consent or novation is obtained:

8.4.1 the Council will hold the benefit of such Contracts upon trust for the Company and shall (at the Company’s cost) do all such acts and things as the Company may reasonably require to enable due performance of the Contract by the Company and to provide for the Company the benefits of the Contract (including its rights of enforcement) and

8. 4.2 the Company will, as the Council’s agent, perform all the obligations of the Council under such Contract for the period from the Transfer Date; and

8. 4.3 unless and until any such Contract is assigned or novated, the Council 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.

9. LIABILITIES

9.1 Nothing in this Agreement will make the Company liable in respect of anything done or omitted to be done by the Council up to the Transfer Date in relation to use of the Assets or the carrying on of the School up to the Transfer Date (“Historic Liabilities”) other than as may have been expressly assumed by the Company under this Agreement. Save to the extent that this Agreement provides to the contrary, the Council will indemnify the Company in full against any Losses which the Company may suffer or incur, directly or indirectly, as a result of anything so done or omitted to be done by the Council including any act, default or transaction of the Council or any circumstance occurring in respect of the carrying on of the School up to the Transfer Date and so that where there are any claims by any third parties in respect of services rendered up to the Transfer Date the claims will be met in full by the Council.

9.2 Nothing in this Agreement will make the Council liable in respect of anything done or omitted to be done by the Company after the Transfer Date in relation to the use of the Assets or the carrying on of the Academy by the Company generally after the Transfer Date other than as may have been expressly assumed by the Council under this Agreement and the Company will indemnify the Council in full against any Losses which the Council may suffer or incur as a result of anything so done or omitted to be done by the Company including any act, default or transaction of the Company or any circumstance occurring in respect of the use of the Assets or the carrying on of the Academy on or after the Transfer Date and so that where there are any claims by any third parties in respect of services rendered on or after the Transfer Date the claims will be met in full by the Company.

9.3 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.

9.4. Save as otherwise provided for under this Agreement the Council shall have no financial obligation from the Transfer Date to the Company under this or any other Agreement between the parties.

10 SCHOOL BUDGET SURPLUS

10.1 The Council and the Company shall use all reasonable endeavours to reach agreement on the determination and payment of any Surplus in accordance with the Academy Conversions (Transfer of School Surpluses) Regulations 2013. If the Company disagrees with the any determination by the Council it can apply for a review of that determination as set out in time limits provided by those Regulations.

11. RETENTION OF SCHOOL RECORDS, INFORMATION, ACCESS AND FUTURE ENQUIRIES

11.1 Without prejudice to any other provision of this Agreement, and in so far as it may be lawful for the Council to provide the same and subject to any confidentiality restrictions to which the Council is subject, the Company and its agents will be entitled prior to the Transfer Date subject to satisfaction of any requirements of the Data Protection Act 1998 prior to the Transfer Date and for six years after the Transfer Date to request in writing copies of any records or information which have not been delivered to the Company on or before the Transfer Date and the Council shall provide such copies of records or information then in its possession as soon as reasonably practicable after such request is made and in any event no later than 10 Business Days after such request has been transmitted to the Council.

11.2 The Council shall provide the records or information under clause 11.1 free of charge, unless such records and information have been held centrally by the Council and require Council employees, officers or agents to copy these records and information centrally. In the latter case, the Company may only request copies of such records or information on the following conditions:

11.2.1 before the Transfer Date: free of charge;

11.2.2 at all later dates after the Transfer Date: the Council may charge reasonable Council costs to the Company for searching, collating or photocopying the records or information including the Archive Transaction Cost.

11.3 The Company agrees to store and retain on behalf of the Council the School Records of all former pupils and staff not transferring to the Academy (Personnel Files) held by the School at the Transfer Date, i.e. those records which would ordinarily have been returned to the Council at the Transfer Date, and the Company agrees to process that information, including organising, storing retrieving, disclosing and destroying the School Records in accordance with Council retention guidelines in accordance with the relevant legislation including Data Protection Act 1998, Limitation Act 1980, and Equalities Act 2010 e.g. where applicable unless the Company is required by law to transfer the School Records to another educational establishment: -

• Pupil records – to be retained until the pupil’s 25th birthday

• SEN records – to be retained for 35 years from the Transfer Date

• Child protection records – to be retained for 35 years from the Transfer Date when there has been a referral to social services – if no referral has been made to social services the file should be retained until the pupil’s 25th birthday.

11.4 The Company agrees that should the Council or its agents require access and/or copies of the records which are in the possession of the Company or any School Records retained by the Company on behalf of the Council at any time on or after the Transfer Date subject to any confidentiality restrictions or any requirements of the Data Protection Act 1998, the Company will provide access to the same and/or copies during normal business hours upon receipt of a request in writing, no later than 10 Business Days after such request where the request is received during the Academy term or no later than 10 Business Days after the commencement of the next Academy term where the request is received outside the Academy term.

11.5 Any books, documents or records referred to in this clause 11 will, subject to the requirements of any applicable legislation including the Data Protection Act 1998, be retained by the Council or the Company in the United Kingdom until at least six years from the Transfer Date or longer if required by Statute or reasonably required by the Council.

11.6 The Company agrees that it will be responsible from the Transfer Date for the Transferring Records which it has been passed by the Council and will maintain them in accordance with Clause 11.5 above. The Company agrees to retain on behalf of the Council those School Records which would ordinarily have been returned to the Council on the Transfer Date in accordance with Clauses 11.3 and 11.5 above and to inform the Council of any relevant data breaches in relation to those School Records retained on behalf of the Council and to indemnify the Council against any loss attributed to such a breach.

11.7 The Company agrees to dispose of securely at the end of the academic year (or as soon as practical after that time) any School Records retained by the Company which have reached the end of their administrative life in accordance with Council retention guidelines. School Records which have been identified for destruction will be confidentially destroyed. The Company agree to shred prior to disposal or arrange for confidential disposal. The Company will also maintain a list of School Records which have been destroyed and who authorised their destruction and this will be kept in either paper or an electronic format. The Council will be entitled following a reasonable request in writing for copies of the destruction record.

11.8 The Council agrees to update the Company as and when any retention guidelines are issued by the Council.

12. COSTS

12.1 Each party to this Agreement will bear its own costs and expenses relating to this Agreement except where otherwise expressly stated.

13. NOTICES

13.1 Any demand, notice or other communication in connection with this Agreement will be in writing and will, if otherwise given or made in accordance with this clause 13, be deemed to have been duly given or made as follows: -

13.1.1 if sent by pre-paid first class post, on the second Business Day after the date of posting;

13.1.2 if delivered by hand, upon delivery at the address provided for in this clause 13; or

13.1.3 if sent by facsimile, on the day of transmission provided that a confirmatory copy is, on the same Business Day that the facsimile is transmitted, sent by pre-paid first class post in the manner provided in this clause 13,

13.1.4 provided that if it is delivered by hand or sent by facsimile on a day which is not a Business Day or after 4.00pm on a Business Day, it will instead be deemed given or made on the next Business Day.

13.2 Any such demand, notice or other communication will, in the case of service by post or delivery by hand, be addressed to the recipient at the recipient’s address stated in this Agreement or such other address as may from time to time be notified in writing by the recipient to the sender as being the recipient’s address for service and will, in the case of service by facsimile, be sent to the recipient using a facsimile number then used by the recipient.

14. DISPUTE RESOLUTION PROCEDURE

14.1 Where a dispute arises in connection with this Agreement, a senior representative of each of the parties shall meet as soon as practicable after such dispute arises or a dispute is anticipated and each party shall use its best endeavours to resolve that dispute or anticipated dispute as soon as possible and in any event within three Business Days of such dispute arising or of such anticipated dispute becoming expected.

14.2 In the event that the senior representatives fail to settle the dispute, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure.

14.3 Neither party shall commence court proceedings or arbitration in relation to any dispute arising pursuant to this Agreement until it has attempted to settle the dispute by mediation and either: -

14.3.1 the mediation has concluded or been terminated; or

14.3.2 the other party has failed to participate in the mediation;

provided always that the right to issue proceedings shall not be prejudiced by such delay.

14.4 Each party shall bear its own costs in relation to the reference to the mediator and the mediator’s fees and any costs properly incurred by him shall be borne by the parties equally.

15. FORCE MAJEURE

15.1 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.

16. **CONFIDENTIALITY**

16.1 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.

17. GENERAL

17.1 This Agreement will be binding on and endure for the benefit of each party’s successors and assigns.

17.2 Except in so far as they have been fully performed at the Transfer Date, the provisions of this Agreement will continue in full force and effect notwithstanding the Transfer Date.

17.3 Failure or delay by any party in exercising any right or remedy under this Agreement will not operate as a waiver of it.

17.4 Any waiver of any breach of this Agreement will not be deemed a waiver of any subsequent breach and will in no way affect the other terms of this Agreement.

17.5 The rights and remedies expressly provided for by this Agreement will not exclude any rights or remedies provided by law.

17.6 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, each of which so executed and delivered will be an original, but all the counterparts will together constitute one and the same agreement.

17.7 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or any terms of this Agreement will be governed by English law. The English courts will have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement. The parties agree to submit to the said jurisdiction.

17.8 Except in relation to clauses 6.2 – 6.4, 6.9 and 6.11 of this Agreement, the parties to this Agreement do not intend that any of its terms will by virtue of the Contracts (Rights of Third Parties) Act 1999 be enforceable by any person not a party to it. In relation to clauses 6.2 – 6.4, 6.9 and 6.11 of this Agreement, the parties to this Agreement agree that these clauses may be enforced by the Transferring Employees to whom they relate.

17.9 If any provision of this Agreement shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of this Agreement, which shall remain in full force and effect to the extent permitted by law.

17.10 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or reduced in application, the provision in question shall apply with such modification as may be necessary to make it valid.

17.11 This Agreement and the documents referred to in it constitute the entire agreement between the parties and supersedes any previous agreement, understanding, undertaking or arrangement of any nature whatsoever between the parties relating to the subject matter of this Agreement. The Company has not relied on any representation or warranty in entering into this Agreement, not expressly set out in the Agreement.

**SIGNED** by )

Duly authorised on behalf of the )

**CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL**

**SIGNED** by )

Duly authorised on behalf of the )

**THE GOVERNING BODY OF**

**SIGNED** by )

Duly authorised on behalf of

SCHEDULE 1

List of Transferring Employees

**SCHEDULE 2**

Assets Register

THE ASSETS

1. All equipment, furniture, fixtures and fittings on the site of the School (“the loose plant and equipment”), subject to all contractual obligations in respect of any part of the loose plant and equipment which is the subject of any leasing, hire or hire purchase agreements listed in this Schedule except, for the avoidance of doubt, the Excluded Assets.

2. All rights to use the name and all logos and domain names used in connection with the School. All copyrights, database rights and other intellectual property rights owned by the School.

3. All rights of the School in respect of computer software used at the School whether granted by licence or otherwise.

4. The benefit (subject to the burden) of the Contracts.

5. The School Fund

**INVENTORY OF ASSETS REGISTER 2016**

Only equipment purchased with school devolved funding has been included in this Assets Register and so far as the Council is aware are as follows:

**SCHEDULE 3**

List of Contracts

 **- Transferring Contracts**

**SCHEDULE 4**

Excluded Assets and Excluded Contracts

The following assets and contracts so far as the Council is aware are excluded from this transfer:

1. The freehold or leasehold titles to the site of the School registered at HM Land Registry and dealt with by separate agreement.

2. Cash in hand or at bank (other than any surplus transferred to the Company from the Council and the Governing Body pursuant to the Academy Conversions (Transfer of School Surpluses) Regulation 2013.

3. Excluded Contracts: -