

Commercial Transfer Agreement

Legal agreement between an outgoing academy trust and an incoming academy trust in relation to an academy transfer where the outgoing trust continues to operate

March 2024

**DATED 20****[XX]**

**(1) [NAME OF INCOMING ACADEMY TRUST]**

**(2) [NAME OF OUTGOING ACADEMY TRUST]**

**TRANSFER AGREEMENT**

**Re: [Insert Name of Academy]**

**THIS AGREEMENT** is made **20[XX]**

**BETWEEN:**

(1) **[INCOMING AT]**, a charitable company incorporated in England and Wales with registered company number [….]whose registered address isat … … …(the "**Incoming Trust**"); and

(2) **[OUTGOING AT]**, a charitable company incorporated in England and Wales with registered company number [….]whose registered address is at … … …(the "**Outgoing Trust**"),

together the "**Parties**" and each a "**Party**"

**WHEREAS**

1. [Name of Academy] is an academy within the meaning of the Academies Act 2010 and is currently operated by the Outgoing Trust.
2. It is proposed that with effect from 00.01am on the Transfer Date, the Incoming Trust will assume responsibility for the management and operation of the Academy in succession to the Outgoing Trust.

# **DEFINITIONS AND INTERPRETATION**

* 1. In this Agreement the following words shall have the following meanings:-

|  |  |
| --- | --- |
| **“Academy”** | means [**Insert Name**]; |
| **“Academy Employees”** | means any employees of the Outgoing Trust or of any other persons who are assigned to the Academy or to services provided in connection with the Academy; |
| "**Administering Authority**" | means a body recognised in the LGPS regulations and which is responsible for the management of an LGPS pension fund; |
| **“Assets”** | means all property, undertaking, rights and assets, whether tangible or intangible, of whatever nature used or held by the Outgoing Trust for the purposes of the Academy including those listed in Schedule 3, but excluding the Excluded Assets and any interest in land; |
| **“Contractor”** | means a contractor providing services to the Incoming Trust to whom the contract of employment of any Transferring Employee is transferred pursuant to the Regulations on or after the Transfer Date; |
| **“Contracts”** | means the contracts entered into by the Outgoing Trust for the purpose of operating the Academy in the ordinary course of business which are still in force at the Transfer Date, including those contracts listed in Schedule 2 (true and accurate copies of which have been disclosed to the Incoming Trust prior to the Transfer Date); |
| "**Data Protection Legislation**" | means all applicable data protection and privacy legislation in force from time to time in the UK including the UK General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended, 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; |
| "**Deed of Novation and Variation**" | means the Deed of Novation and Variation between the Parties and the Secretary of State for Education relating to the Supplementary Funding Agreement for the Academy pursuant to which the Incoming Trust assumes responsibility for the management and operation of the Academy in succession to the Outgoing Trust;  |
| **“Eligible Employees”** | means the Transferring Employees who are active members of or eligible to join either the LGPS or the TPS immediately before the Transfer Date; |
| **"Employee Liability Information"** | means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of the Regulations  |
| **“Employee Schedule"** | means a list of all Academy Employees as at the date that the list is provided to the Incoming Trust; |
| **"Encumbrance"** | means any mortgage, charge, pledge, lien, equity, option, restriction, right of refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind, and any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect; |
| **“Excluded Assets”** | means the assets described in Schedule 4 which are excluded from the transfer effected by this Agreement; |
| **"Excluded Liabilities"** | means all liabilities of the Outgoing Trust incurred up to the Transfer Date and specifically including:1. 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 up to and including the Transfer Date but not including LGPS deficit liabilities referred to in Clause 5.2;
2. all debts, liabilities and obligations of any nature incurred by the Outgoing Trust comprising of and/or relating in whole or in part to the Excluded Assets;
3. any liability of a director or former director of the Outgoing Trust arising as a result of an act or omission which he or she (1) knew to be a breach of trust or breach of duty; or (2) recklessly disregarded whether such act or omission was a breach of trust or breach of duty;
4. any liability of a director or former director of the Outgoing Trust arising as a result of his or her fraud;
5. any liability arising from any criminal act or omission by the Outgoing Trust or any director or former director of the Outgoing Trust; or
6. any liability in respect of which any director or former director of the Outgoing Trust has given any personal guarantee which has not been disclosed to the Incoming Trust in writing prior to the Transfer Date;
 |
| **“Final Employee Schedule"** | means a list of all Academy Employees as at the Transfer Date; |
| **“Loss”** | means all costs, claims, liabilities and expenses (including reasonable legal expenses); |
| **“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; |
| **"Pensionable Employees"** | means any employees wholly assigned to the Academy at any time when the Academy was an academy and who were members of the LGPS or TPS during that time;  |
| "**Periodical Outgoings**" | means monthly employer and employee pensions contributions paid by the employer to the pension fund as set by the administering authority; |
| **“Personnel Files”** | means in respect of the Transferring Employees copies of all personnel files or records relating to their employment at the Academy and any previous period of continuous employment with the Outgoing Trust, 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; |
| "**Prepayments**" | means the advance payment of employer pension contributions, usually as a lump sum at the start of the scheme year; |
| **“Pupil Records”** | means the following records and information in respect of the pupils at the Academy: [insert details of what information the Incoming Trust would like in respect of pupils]; |
| **“Regulations”** | means The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time); |
| **“Staffing Information”** | means, in respect of the Academy Employees, the information listed in Schedule 1; |
| **“TPS”** | means the Teachers’ Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 9 and 12 of and Schedule 3 to the Superannuation Act 1972 as from time to time amended; |
| **“Transfer Date”** | means the date specified in the Deed of Novation and Variation on which the Academy will transfer to the Incoming Trust; |
| **“Transferring Employees”** | means any Academy Employees whose employment transfers to the Incoming Trust or to a Contractor on the Transfer Date pursuant to the Regulations and who are listed in the Employee Schedule; |

* 1. In this Agreement (except where the context otherwise requires):
		1. use of the singular includes the plural (and *vice versa*) and use of any gender includes the other genders;
		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;
		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
		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.
	2. 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.
	3. In the event of any conflict or inconsistency between the Clauses and the Schedules of this Agreement, the Clauses shall prevail.
	4. 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.
	5. 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**

2.1 This Agreement is conditional on the Deed of Novation and Variation being signed by the Parties and the Secretary of State for Education. If the Deed of Novation and Variation is not so signed by the date which is six months after the date of this Agreement (the “Deadline”), this Agreement will cease to have effect on the day after the Deadline.

1. Operation of the Regulations

The Parties intend and acknowledge that the transfer of the Academy shall constitute a transfer to which 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 Incoming Trust or (as the case may be) a Contractor and the Transferring Employees.

1. **PROVISION OF STAFFING INFORMATION AND WARRANTIES**
	1. Without prejudice to its obligation pursuant to the Regulations to provide the Employee Liability Information, the Outgoing Trust shall on or before [*Insert date*] to the extent lawfully permitted provide the Incoming Trust with the Employee Schedule and Staffing Information.
	2. The Outgoing Trust shall notify the Incoming Trust of any material change to the Employee Schedule and the Staffing Information as soon as is reasonably practicable, and shall upon request by the Incoming Trust meet the Incoming Trust to discuss the information disclosed.
	3. The Outgoing Trust warrants:
		1. that the information in the Employee Schedule and the Staffing Information shall be complete and accurate and kept up-to-date;
		2. that neither it (nor any other employer of an Academy Employee) is in material breach of the contract of employment of any of the Academy Employees nor is any Academy Employee in material breach of his contract of employment;
		3. that none of the Academy Employees have given or received notice of termination of employment nor are any of the Academy Employees the subject of any material disciplinary action nor is any Academy Employee engaged in any grievance procedure; and
		4. that neither it (nor any other employer of an Academy Employee) is engaged in relation to any Academy 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; and
		5. that by the Transfer Date all Transferring Employees will have been checked against List 99 and checked through the Criminal Records Bureau.
	4. The Outgoing Trust undertakes to the Incoming Trust that during the period from the date of this Agreement up to and including the Transfer Date:
		1. the Outgoing Trust shall enable and assist the Incoming Trust and such other persons as the Incoming Trust may determine to communicate with and meet the Academy Employees and their trade union or other employee representatives;
		2. the Outgoing Trust shall not (and shall procure that any other employer of the Academy Employees shall not), without the prior written consent of the Incoming Trust:
			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 Academy Employees (other than where such amendment or variation has previously been agreed between the Outgoing Trust and the Academy 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 Incoming Trust);
			2. terminate or give notice to terminate the employment or engagement of any Academy Employees (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
			3. employ or assign any person to the Academy who would or might as a consequence of such employment or assignment become a Transferring Employee;

and the Outgoing Trust shall indemnify the Incoming Trust from and against all Losses incurred by the Incoming Trust in connection with or as a result of a breach of their obligations under this Clause.

1. Apportionments
	1. The Outgoing Trust shall be responsible for all emoluments and outgoings in respect of the Academy Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to but not including the Transfer Date, and will pay such liabilities in the ordinary course of business prior to the Transfer Date.
	2. The Outgoing Trust shall be responsible for all LGPS pension deficit contributions in respect of the Eligible Employees and Pensionable Employees that become payable before the Transfer Date and will pay such liabilities in the ordinary course of business prior to the Transfer Date.
	3. All Periodical Outgoings shall be apportioned by reference to the Transfer Date such that the Outgoing Trust shall be responsible for such part of the Periodical Outgoings that relate to the period ending on the day prior to the Transfer Date and the Incoming Trust shall be responsible for such part of the Periodical Outgoings that relate to the period on or after the Transfer Date. All Periodical Receipts shall be apportioned between the Outgoing Trust and the Incoming Trust on a like basis.
	4. The Incoming Trust shall reimburse the Outgoing Trust in respect of any Prepayments.
	5. As soon as reasonably possible and in any event on or before [Insert Date] the Outgoing Trust and Incoming Trust shall prepare and endeavour to agree a schedule (**Apportionments Schedule**) of the apportionments and reimbursements required to be made in accordance with this Clause 5.
	6. If the parties fail to agree the Apportionments Schedule on or before [Insert date], either party may request that the dispute is referred for resolution to an Independent Accountant. If the parties fail to agree who to appoint as the Independent Accountant within 14 days, either party may apply to the President for the time being of the Institute of Chartered Accountants in England and Wales to nominate the Independent Accountant and following such nomination, the parties shall use their reasonable endeavours to agree terms with the Independent Accountant as soon as reasonably possible and neither party shall unreasonably withhold consent to the terms of appointment offered by the Independent Accountant. If the parties are unable to agree terms with the nominated Independent Accountant within 14 days of its nomination, then either party may apply to the President for the time being of the institute of Chartered Accountants in England and Wales to nominate another Independent Accountant and the process shall be repeated until terms are agreed. The Independent Accountant shall act as an expert not as an arbitrator. The Independent Accountant's findings shall, in the absence of fraud or manifest error, be binding on the parties. The reasonable fees of the Independent Accountant shall be borne by the parties in such proportions as the Independent Accountant may determine. Each party shall provide the Independent Accountant with such assistance and documents as the Independent Accountant requires in connection with this Clause.
	7. Any balancing payment to be paid by either party pursuant to this Clause 5 shall be paid in cash within 14 days of the Apportionments Schedule being agreed or becoming final and binding on the parties.
2. **INFORMATION AND CONSULTATION**
	1. The Incoming Trust 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.
	2. The Outgoing Trust shall comply with its obligations under Regulations 13 and 14 of the Regulations during the period prior to the Transfer Date, save where the Outgoing Trust is unable to do so as a result of the failure of the Incoming Trust and/or any Contractor to comply with their duties under Regulation 13 of the Regulations.
3. Indemnities in relation to transferring employees
	1. The Outgoing Trust shall indemnify the Incoming Trust (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 Incoming Trust in connection with or as a result of:
		1. any claim or demand by any Academy Employee or former Academy Employee (whether in contract, tort, under statute 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 Academy Employee or former Academy 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);
		2. any failure by the Outgoing Trust or any other employer of the Academy 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 Incoming Trust or any Contractor to comply with its duties under Regulation 13 of the Regulations;
		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 Academy Employees (or other employees of the Outgoing Trust) arising from or connected with any failure by the Outgoing Trust or any other employer of the Academy Employees to comply with any legal obligation to such trade union, body or person; and/or
		4. any claim by any person (other than a Transferring Employee) in respect of which the Incoming Trust or any Contractor incurs or is alleged to incur responsibility or liability as a result of the operation of the Regulations.
	2. If in connection with the transfer to the Incoming Trust it is found or alleged that the employment of any person other than the Transferring Employees has transferred to the Incoming Trust or a Contractor pursuant to the Regulations:
		1. the Incoming Trust (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
		2. the Outgoing Trust shall indemnify and keep indemnified the Incoming Trust (both for itself and any Contractor) against all Losses which the Incoming Trust (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.
	3. The Incoming Trust shall (in respect of Transferring Employees employed by the Incoming Trust), and shall use reasonable endeavours to procure that any Contractor shall (in respect of Transferring Employees employed by the Contractor), indemnify the Outgoing Trust against all Losses incurred by that party in connection with or as a result of:
		1. any claim or demand by any Transferring Employee (whether in contract, tort, under statute 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 Incoming Trust or the Contractor, as the case may be, in respect of any Transferring Employee on or after the Transfer Date;
		2. any failure by the Incoming Trust or the Contractor, as the case may be, to comply with its obligations under Regulation 13 of the Regulations; and/or
		3. any claim or demand by any Academy 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 Incoming Trust or the Contractor, as the case may be, on the Transfer Date, where that Academy 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.

**[DN: The Incoming Trust must flow these indemnities down in any contracts which it enters into for the provision of services at the Academy.]**

1. Pensions
	1. The parties acknowledge that the Incoming Trust is a “scheme employer” for the purposes of the Local Government Pension Scheme Regulations 2013 (“**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 Incoming Trust (as the person carrying on the business of the Academy).
	2. The parties acknowledge that the Incoming Trust is an “employer” for the purposes of the Teachers’ Pension Scheme Regulations 2014 (“**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 Incoming Trust (as the person carrying on the business of the Academy).
	3. The Incoming Trust 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.
	4. The Outgoing Trust shall be responsible for all employer contributions payable to the LGPS and the TPS in respect of the Eligible Employees and Pensionable Employees referable to service up to and including the Transfer Date.
	5. The Incoming Trust shall be responsible for any LGPS deficit relating to the Eligible Employees and Pensionable Employees’ membership of the LGPS, except for those that remain the responsibility of the Outgoing Trust under Clause 5.2. For the avoidance of doubt, the Outgoing Trust’s obligation under this Clause extends to any LGPS deficit in respect of the Eligible Employees and Pensionable Employees’ membership of the LGPS before the Transfer Date.
	6. The Incoming Trust shall:
		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;
		2. promptly provide to the Outgoing Trust such documents and information which the Outgoing Trust may reasonably request in advance of any onward transfer of any person engaged or employed by the Incoming Trust; and
		3. fully co-operate with the reasonable requests of the Outgoing Trust relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Incoming Trust.

The Incoming Trust acknowledges that the basis on which the Administering Authority determines the value of either or both of the assets and liabilities to be notionally credited or attributed to the Incoming Trust with effect from or at any valuation after the Transfer Date, is entirely a matter for the Administering Authority acting in accordance with its duties and responsibilities under the LGPS Regulations, and that the Outgoing Trust has no influence or obligation to attempt to influence the Administering Authority’s decision making in this regard.

1. The Assets and the Contracts
	1. On the Transfer Date the Outgoing Trust 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 Incoming Trust, save for any Encumbrance which has been fully and accurately disclosed to the Incoming Trust prior to the Transfer Date.
	2. The Outgoing Trust undertakes with effect from the Transfer Date to assign to the Incoming Trust or to procure the assignment to the Incoming Trust all the Contracts which are capable of assignment without the consent of other parties to those contracts.
	3. If any of the Contracts cannot be transferred to the Incoming Trust except by an assignment made with the consent of another party or by an agreement of novation:
		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;
		2. after the Transfer Date the parties shall use their respective reasonable endeavours to obtain the consent of the other party to the assignment, or to procure the novation, of the Contract; and
		3. until the consent or novation is obtained:
			1. the Outgoing Trust shall hold the same on trust for the Incoming Trust and shall (at its cost) do all such acts and things as the Incoming Trust may reasonably require to enable due performance of the Contract and to provide for the Incoming Trust the benefits of the Contract (including enforcement of any right of the Outgoing Trust against the other party to the Contract arising out of its termination by the other party or otherwise);
			2. the Incoming Trust shall (if sub-contracting is permissible and lawful under the Contract in question), as the Outgoing Trust's sub-contractor, perform all the obligations of the Outgoing Trust under such Contract and where sub-contracting is not permissible, the Incoming Trust shall perform such obligations as agent for the Outgoing Trust; and
			3. unless and until any such Contract is assigned or novated, the Outgoing Trust shall (so far as it lawfully may) at the Incoming Trust's cost give all such assistance as the Incoming Trust may reasonably require to enable the Incoming Trust 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 Incoming Trust may reasonably require from time to time.
	4. Pending the Transfer Date, possession of the Assets shall be retained by the Outgoing Trust.
	5. 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 Outgoing Trust and the Outgoing Trust undertakes to indemnify and keep the Incoming Trust indemnified against any Historic Liabilities. The Parties agree that this Clause 9.5 is separate from and shall not affect the various liabilities addressed in Clauses 4 (Provision of Staffing Information and Warranties) and 7 (Indemnities in relation to Transferring Employees).
	6. All receipts relating to the Assets and the Contracts and all Losses and outgoings incurred or payable as from and including the Transfer Date (“**Future Liabilities**”) shall belong to, and be paid and discharged by the Incoming Trust and the Incoming Trust undertakes to indemnify and keep the Outgoing Trust indemnified against any Future Liabilities. The Parties agree that this Clause 9.6 is separate from and shall not affect the various liabilities addressed in Clauses 4 (Provision of Staffing Information and Warranties) and 7 (Indemnities in relation to Transferring Employees).
	7. Nothing in this Agreement shall pass to the Incoming Trust, or shall be construed as acceptance by the Incoming Trust of, the Excluded Liabilities and the Excluded Assets and the Outgoing Trust shall be responsible for, and pay, satisfy and perform the Excluded Liabilities whether arising before or after the Transfer Date and indemnify the Incoming Trust against Losses in respect of the same.
	8. The Incoming Trust agrees that, following the Transfer Date, it shall provide the Outgoing Trust with sufficient information, as reasonably requested by the Outgoing Trust, to enable the Outgoing Trust to accurately determine and discharge any Historic Liabilities (including, without limitation, any payments relating to the Academy's accounts). In the event that the Outgoing Trust makes an underpayment or overpayment in relation to any Historic Liabilities (including, without limitation, any payments relating to the Academy's accounts), the Outgoing Trust and the Incoming Trust agree to repay any such sums to the other (as appropriate). In the event that the Outgoing Trust has made no payment in relation to any Historic Liabilities but has received payment from the Secretary of State for Education in respect of these, and this amount is an underpayment or an overpayment, the Outgoing Trust and the Incoming Trust agree to repay any such sums to the other (as appropriate).
	9. The Outgoing Trust shall on or before the Transfer Date deliver to the Incoming Trust the Personnel Files and the Pupil Records, to the extent that they are permitted to do so by Data Protection Legislation (and the Outgoing Trust shall use reasonable endeavours to ensure that they are permitted by Data Protection Legislation to deliver such information to the Incoming Trust).
	10. The Incoming Trust 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. **CONDUCT OF CLAIMS**
	1. In respect of the indemnities given in this Agreement:
		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;
		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
		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.
3. Confidentiality

Each party undertakes to the others that it will keep the contents of this Agreement confidential as between the parties and the Department for Education (or its successors) except to the extent that disclosure is required by law.

1. 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 Outgoing Trust nor the Incoming Trust 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.

1. 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.

1. general
	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.
	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.
	3. If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction or illegal, the other provisions will remain unaffected and in force.
	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.
	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).
	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.
	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.
	8. Any notice shall be deemed to have been duly received:
		1. if delivered personally, when left at the address and for the contract referred to in this Clause; or
		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
		3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
	9. A notice required to be given under this Agreement shall not be validly given if sent by email.
	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.
	11. Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of this Agreement.
	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. 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.
2. governing law and jurisdiction
	1. This Agreement will be governed by and interpreted in accordance with the law of England and Wales.
	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.

**SIGNED** by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) …………………………………………..

Duly authorised on behalf of the )

**OUTGOING TRUST**

**SIGNED** by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) …………………………………………..

Duly authorised on behalf of

**INCOMING TRUST**

1.

STAFFING INFORMATION

1. **Individual terms and conditions**
	1. Copies of all current employment contracts, and all other terms and conditions of employment.
	2. A schedule comprising in respect of each employee, the following particulars:-
		1. full name;
		2. post;
		3. whether the employment is full or part time;
		4. sex;
		5. date of birth;
		6. date of commencement of service;
		7. notice period;
		8. normal retirement age;
		9. remuneration;
		10. pension;
		11. in respect of teachers:
			1. scale point or leadership group spine point;
			2. assimilation point for the head teacher;
			3. whether the employee is a post-threshold teacher;
			4. whether the employee is a good honours graduate;
			5. management, recruitment, retention and/or any other allowances payable;
			6. any applicable assimilation safeguarding,

and all other benefits whether contractual or otherwise.

* 1. Details of any recent changes of terms and conditions in relation to any employee.
	2. Copies of any employee handbooks, rules and other policies, procedures, arrangements or agreements in relation to:-
		1. redundancy procedures and payments;
		2. redeployment procedures;
		3. sickness absence and sick pay entitlements;
		4. equal opportunities;
		5. disciplinary matters;
		6. maternity rights;

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

* 1. Copies of any job descriptions.
	2. Details of any practices or customs which although not written down form part of employees' terms and conditions of employment.
1. **Collective bargaining**
	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. Details of any trade union recognised by the Outgoing Trust, 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.
	3. Details of any other agreement, whether Academy, 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".
	4. Details of which, if any, of the terms of any collective agreement form part of individuals' terms and conditions of employment.
2. **Disputes**
	1. Details of any dispute with any employee whether brought under the Outgoing Trust's disciplinary or grievance procedure or otherwise and any matters which might give rise to such.
	2. Details of any litigation threatened or pending against the Outgoing Trust, including any court, employment tribunal or arbitration claims or any matters which might give rise to such.
	3. Details of any enquiry, correspondence or contact between the Outgoing Trust and the Commission for Racial Equality, the Equal Opportunities Commission, the Health and Safety Inspector and the Inland Revenue concerning employees.
	4. Details of any court judgment or current employment tribunal award in respect of any employee dispute.
	5. Details, and, if available, copies, of any warnings given to employees under the Outgoing Trust's disciplinary or capability procedures.
3. **Dismissals**
	1. Details of all dismissals/resignations within the last 12 months including reasons for the dismissal/resignation.
	2. Details of all employees recruited within the last 12 months.
4. **Working Time Regulations 1998**
	1. Copies of any individual, collective and workforce agreements entered into pursuant to the Working Time Regulations.
5. **Health and Safety**
	1. Details of any health and safety committees/representatives.
	2. Details of any health and safety complaints or recommendations or claims within the last 5 years.
6. **Trainees/Consultants**
	1. Details of all individuals in the undertaking working on training, work experience or similar schemes.
	2. Details of all consultancy agreements or self-employed personnel who are or may actually be employees.
7. **Absent employees**
	1. Details of all employees who have notified the Outgoing Trust that they are pregnant or who are currently absent on maternity leave.
	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.
8. **Job Evaluation Scheme**
	1. A copy of any job evaluation scheme.
9. **Contractor Employees**
	1. Details of any individuals employed by contractors working in the Academy.
10. **Pension**
	1. A list of all pension schemes (both occupational and personal) applicable to the employees.
	2. Details of any current or pending applications for early retirement.

1.

the contracts

## **[DN: List of transferring contracts to be added]**

1.

the ASSETS

1. All equipment, furniture, fixtures and fittings on the site of the Academy (“**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 [ ] except, for the avoidance of doubt, the Excluded Assets.
2. All rights to use the name of the Academy and all logos and domain names used exclusively by the Academy. All copyrights, database rights and other intellectual property rights owned by the Outgoing Trust (as appropriate) and used exclusively by the Academy.
3. All rights of the Outgoing Trust (as appropriate) in respect of computer software used by the Academy whether granted by licence or otherwise.
4. Any balance remaining from the Academy's budget following completion of due accounting procedures.
5. The benefit of any grants made to the Outgoing Trust which relate directly to the Academy.

1.
2. the excluded assets

The following assets are excluded from this transfer:

1. The freehold titles to the site of the School.
2. Cash in hand or at bank.
3. The benefit of any grants made to the Outgoing Trust which do not relate directly to the Academy.