

DATED.....2014

(1) OXFORDSHIRE COUNTY COUNCIL

(2) THE GOVERNING BODY OF FREELAND CHURCH OF ENGLAND PRIMARY SCHOOL

(3) EYNHAM PARTNERSHIP ACADEMY

TRANSFER AGREEMENT
Re: Freeland Church of England Primary School

BETWEEN:

- (1) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford, OX1 1ND (the "**Council**");
- (2) **THE GOVERNING BODY OF FREELAND CHURCH OF ENGLAND PRIMARY SCHOOL OF** Parklands, Freeland OX29 8HX (the "Governing Body");
- (3) **EYNHAM PARTNERSHIP ACADEMY** a company limited by guarantee registered in England and Wales (company number 07939655) whose registered office is at Bartholomew School, Witney Road, Eynsham, Witney, Oxfordshire OX29 4AP (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) On the Transfer Date a church land supplemental agreement will be entered into by the Company and the trustees who own part of the School site and the Council will grant a lease to the Company of the playing fields which form part of the School site.

1 DEFINITIONS AND INTERPRETATION

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

"Academy" means the academy to be run by the Company on the site of the School under the proposed name Freeland Church of England Primary School;

"Assets" means all property, undertaking, rights and assets, whether tangible or intangible, of whatever nature used or held by the Council and/or the Governing Body (as the case may be) for the purposes of the School including those listed in Schedule 3, but excluding the Excluded Assets;

"Contractor" means a contractor providing services to the Company to whom the contract of employment of any Transferring Employee is transferred pursuant to the Regulations on or after the Transfer Date;

"Contracts" means 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 those contracts listed in Part 1 of Schedule 2, excluding the Excluded Contracts;

"Data Protection Legislation" means the Data Protection Act 1998 ("DPA"), and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable, the guidance and codes of practice issued by the Information Commissioner;

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

"Eligible Employees" means the Transferring Employees who are active members of or eligible to join either the LGPS or the TPS immediately before the Transfer Date;

"Employee Liability Information" means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of the Regulations;

"Employee Schedule" means the list of all School Employees, set out in Schedule 5 as updated in accordance with Clause 4.3.1;

"Encumbrance" means any mortgage, charge, pledge, lien, equity, option, restriction, right of refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind, and any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect;

"Excluded Assets" means the assets described in Schedule 4. which are excluded from the transfer effected by this Agreement;

"Excluded Contracts" means the contracts excluded from the transfer as listed in Part 2 of Schedule 2, including all Global Contracts;

"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;

"Global Contracts" means all contracts entered into by the Council which benefit the School amongst other parties but which do not relate exclusively to the School and are in force at the Transfer Date. The Global Contracts are Excluded Contracts;

"Loss" means all costs, claims, liabilities and expenses (including reasonable legal expenses);

"the LGPS" means a Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as from time to time amended;

"the Personnel Files" means in respect of the Transferring Employees copies of all personnel files or records relating to their employment at the School and any previous period of continuous employment with the Council 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;

"the Pupil Records" means all records and information in respect of the pupils at the School who will or who are likely to become pupils at the Academy;

"the Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time);

“the School” means Freeland Church of England Primary School;

“School Employees” means any employees of the Council who are assigned to the School or to services provided in connection with the School;

“Staffing Information” means, in respect of the School Employees, the information listed in Schedule 1;

“the TPS” means the Teachers’ Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 9 and 12 of and Schedule 3 to the Superannuation Act 1972 as from time to time amended;

“Transfer Date” means 1 June 2014 being the date specified in the funding agreement on which the Academy will open or such other opening date as is agreed between the Secretary of State and the Company; and

“Transferring Employees” means any School Employees who are listed in the Employee Schedule, and (if applicable) any other persons who are assigned to the School or to services provided in connection with the School, whose employment transfers to the Company or to a Contractor on the Transfer Date pursuant to the Regulations.

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

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

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

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

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

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

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

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

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

2 CONDITION PRECEDENT

2.1 This Agreement is conditional upon the Funding Agreement being signed by the Company and the Secretary of State on or before 1 June 2014. In the event that the Funding Agreement is not signed by such date, this Agreement shall be of no effect.

3 OPERATION OF THE REGULATIONS

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

4 PROVISION OF STAFFING INFORMATION AND WARRANTIES

4.1 Without prejudice to its obligation pursuant to the Regulations to provide the Employee Liability Information, the Council shall on or before the date of this Agreement to the extent lawfully permitted provide the Company with the Employee Schedule and Staffing Information.

4.2 The Council shall notify the Company of any material change to the Employee Schedule and the Staffing Information as soon as is reasonably practicable, and shall upon request by the Company meet the Company to discuss the information disclosed.

4.3 The Council warrants, save, in relation to sub-clauses 4.3.2 – 4.3.6, where the Staffing Information provided states otherwise:

4.3.1 that the information in the Employee Schedule and the Staffing Information was complete and accurate as at the date it was supplied and the Council shall notify the Company of any changes to the Employee Schedule and the Staffing Information occurring after that date up to and including the Transfer Date;

4.3.2 that it is not in material breach of the contract of employment of any of the School Employees nor is any School Employee in material breach of his contract of employment;

4.3.3 that none of the School Employees have given or received notice of termination of employment nor are any of the School Employees the subject of any material disciplinary action nor is any School Employee engaged in any grievance procedure;

4.3.4 that it is not engaged in relation to any School Employee in any dispute, claim or legal proceedings, arising under contract or common law or arising out of or

relating to any statute including the provisions of the Regulations and any claim or allegation of unlawful discrimination;

4.3.5 that all School Employees who carry out teaching are eligible to do so in accordance with the Education (Specified Work and Registration) (England) Regulations 2003; and

4.3.6 that by the Transfer Date all Transferring Employees will have been checked against the Children's Barred List and checked through the Disclosure and Barring Service and all other checks required by law.

4.4 The Council undertakes to the Company that during the period from the date of this Agreement up to and including the Transfer Date:

4.4.1 the Council and the Governing Body shall enable and assist the Company and such other persons as the Company may determine to communicate with and meet the School Employees and their trade union or other employee representatives;

4.4.2 the Council shall not without the prior written consent of the Company:

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

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

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

and the Council shall indemnify the Company from and against all Losses incurred by the Company in connection with or as a result of a breach of their obligations under this clause.

5 APPORTIONMENTS

5.1 The Council shall be responsible for all emoluments and outgoings in respect of the School Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to 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.

5.2 The Company shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Transfer Date, and will indemnify the Council against Losses in respect of the same.

6 INFORMATION AND CONSULTATION

6.1 The Company shall comply (and shall procure that any Contractor complies) with its obligations under Regulation 13 of the Regulations during the period prior to the Transfer Date.

6.2 The Council shall comply with its obligations under Regulations 13 and 14 of the Regulations during the period prior to the Transfer Date, save where the Council is unable to do so as a result of the failure of the Company and/or any Contractor to comply with their duties under Regulation 13 of the Regulations.

7 INDEMNITIES

7.1 The Council shall indemnify the Company (either for itself or for or on behalf of any other person to whom the Transferring 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:

7.1.1 any claim or demand by any School Employee or former School Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, personal injury, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the employer in respect of any School Employee or former School Employee, or any claim relating to the period on and before the Transfer Date (and for the avoidance of doubt, this indemnity shall apply in respect of all Losses incurred by the beneficiary of this indemnity in respect of the period after the Transfer Date where the claim (such as, without limitation, a claim for equal pay) arises out of circumstances which arose on or before the Transfer Date);

7.1.2 any failure by the Council or any other employer of the School Employees to comply with its obligations under Regulations 13 and 14 of the Regulations, or any award of compensation under Regulation 15 of the Regulations, save where such failure arises from the failure of the Company or any Contractor to comply with its duties under Regulation 13 of the Regulations;

7.1.3 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the School Employees (or other employees of the Council or Governing Body) arising from or connected with any failure by the Council or any other employer of the School

Employees to comply with any legal obligation to such trade union, body or person; and/or

7.1.4 any claim by any person (other than a Transferring Employee) in respect of which the Company or any Contractor incurs or is alleged to incur responsibility or liability as a result of the operation of the Regulations.

7.2 If in connection with the closing of the School and the opening of the Academy it is found or alleged that the employment of any person other than the Transferring Employees has transferred to the Company or a Contractor pursuant to the Directive or the Regulations:

7.2.1 the Company (or, where applicable, the Contractor) may by 4pm on the fifteenth (15th) working day following but excluding the day upon which it becomes aware of that allegation or finding, dismiss the employee with immediate effect; and

7.2.2 the Council shall indemnify and keep indemnified the Company (both for itself and any Contractor) against all Losses which the Company (or, where applicable, the Contractor) may suffer or incur in respect of that dismissal and the employment of that person up to the date of the dismissal and any other claim brought by or on behalf of that person.

7.3 The Company shall (in respect of Transferring Employees employed by the Company), and shall use reasonable endeavours to procure that any Contractor shall (in respect of Transferring Employees employed by the Contractor), indemnify the Council against all Losses incurred by that party in connection with or as a result of:

7.3.1 any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Company or the Contractor, as the case may be, in respect of any Transferring Employee on or after the Transfer Date;

7.3.2 any failure by the Company or the Contractor, as the case may be, to comply with its obligations under Regulation 13 of the Regulations; and/or

7.3.3 any claim or demand by any School Employee arising out of any change or proposed change in the terms and conditions of employment or working conditions of that person on or after their transfer to the Company or the Contractor, as the case may be, on the Transfer Date, where that School Employee would have been a Transferring Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of the Regulations on or before the Transfer Date as a result of any such changes.

8 PENSIONS

- 8.1 The parties acknowledge that the 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).
- 8.2 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).
- 8.3 The Company acknowledges that the Eligible Employees shall be, or as the case may be, remain eligible for membership of the LGPS or the TPS (as the case may be) while employed at the Academy following the Transfer Date subject to the terms of the LGPS Regulations and the TPS Regulations.
- 8.4 The Company shall:
- 8.4.1 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;
 - 8.4.2 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
 - 8.4.3 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.

9 THE ASSETS AND THE CONTRACTS

- 9.1 Immediately prior to 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.
- 9.2 The Council and/or Governing Body (as applicable) hereby assign to the Company with effect from the Transfer Date all the Contracts which are capable of assignment without the consent of other parties to those contracts.
- 9.3 If any of the Contracts cannot be transferred to the Company except by an assignment made with the consent of another party or by an agreement of novation:

- 9.3.1 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;
- 9.3.2 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, or to procure a warranty from the other party to the Contract to the Company; and
- 9.3.3 unless and until the consent or novation is obtained, or until a warranty from the other party to the Contract is delivered to the Company which provides the Company with rights equivalent to those it would have had had the relevant Contract been assigned or novated:
- (a) the Council or the Governing Body (as the case may be) shall hold the same on trust for the Company and shall (so far as it lawfully may and provided that the action is within its reasonable capacity and capability) at the Company's cost do all such acts and things as the Company may reasonably require to enable due performance of the Contract and to provide for the Company the benefits of the Contract (including enforcement of any right of the Council or the Governing Body (as the case may be) against the other party to the Contract arising out of its termination by the other party or otherwise);
 - (b) the Company shall (if sub-contracting is permissible and lawful under the Contract in question), as the Council's or Governing Body's (as appropriate) sub-contractor, perform all the obligations of the Council (or Governing Body) under such Contract and where sub-contracting is not permissible, the Company shall perform such obligations as agent for the Council or Governing Body (as appropriate); and
 - (c) the Council or Governing Body (as appropriate) shall (so far as it lawfully may and provided that the action is within its reasonable capacity and capability) 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 that are in the Council's possession as the Company may reasonably require from time to time.

9.4 Where the Company requires the Council to take action pursuant to sub-Clause 9.3.3(a) and/or (c), the Company shall issue written notice of the same to the Council. The Company shall be liable for all costs incurred by the Council in taking such action save where the Council has not complied with clause 9.3.2 in which case any such action shall be at the Council's own cost for such time as the breach of clause 9.3.2 continues. Any cost that the Council incurs under this clause must be approved by the Company in advance and must be reasonable in all the circumstances. The Council shall not be obliged to take any action until such time as the Company approves the costs concerned. Such costs may include officer time, disbursements and the cost of any external agents and contractors. Where the Council

is required to make payment to a third party, the Council may require payment in advance from the Company or for the Company to make payment directly to the third party. Where the Council requires the Company to make payment in advance to the Council, the Council shall issue an invoice and until such payment is made the Council shall not be required to take any action under sub-Clause 9.3.3(a) or (c). In all other circumstances, payment shall be made within 28 days of receipt of an invoice. In the event that payment is not made within 28 days of receipt of an invoice from the Council, until such payment is made the Council shall not be required to take any further action under sub-Clause 9.3.3(a) or (c).

- 9.5 Pending the Transfer Date, possession of the Assets shall be retained by the Council and/or the Governing Body (as the case may be).
- 9.6 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 and the Council undertakes to indemnify and keep the Company and the Governing Body indemnified against any Historic Liabilities.
- 9.7 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 Company and the Company undertakes to indemnify and keep the Council and the Governing Body indemnified against any Future Liabilities.
- 9.8 The Company agrees that, following the Transfer Date, it shall provide the Council with sufficient information, as reasonably requested by the Council, to enable the Council to accurately determine and discharge any Historic Liabilities (including, without limitation, any payments relating to the School's accounts). In the event that the Council makes an underpayment or overpayment in relation to any Historic Liabilities (including, without limitation, any payments relating to the School's accounts), the Council and the Company agree to repay any such sums to the other (as appropriate). In the event that the Council has made no payment in relation to any Historic Liabilities but has received payment from the Secretary of State in respect of these, and this amount is an underpayment or an overpayment, the Council and the Company agree to repay any such sums to the other (as appropriate).
- 9.9 The Council and the Governing Body shall on or before the Transfer Date deliver to the Company the Personnel Files and the Pupil Records, to the extent that they are permitted to do so by Data Protection Legislation (and both the Council and the Governing Body shall use reasonable endeavours to ensure that they are permitted by Data Protection Legislation to deliver such information to the Company).
- 9.10 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 and to only use such information for the purposes for which such information was originally collected or any other lawful purposes.

10 GLOBAL CONTRACTS

- 10.1 Prior to the Transfer Date, the Company shall notify the Council if the Company wishes to continue to benefit from any of the Global Contracts following the Transfer Date. Provided such notification has been received, the Council will use its reasonable endeavours to facilitate that or a similar arrangement between the Company and the relevant contractor within two months of the Transfer Date and agrees to enter into appropriate agreements where necessary to make that possible, to the extent that the Council is able to do so lawfully and reasonably having regard to its policies and resources.
- 10.2 In the event that arrangements pursuant to clause 10.1 have not been entered into by 31 July 2014 and provided that the Council has complied fully with its obligations in clause 10.1:
- a) the Council's obligation under clause 10.1 shall cease;
 - b) the Council will use reasonable endeavours to vary the relevant Global Contracts to remove the goods/services being provided to the School as soon as reasonably practicable; and
 - c) for the avoidance of doubt and without prejudice to Condition 10.5, the Council shall be under no obligation to procure that any services under the relevant Global Contract are provided to the Company.
- 10.3 If prior to the Transfer Date the Company does not notify the Council that it wishes to continue to benefit or notifies the Council that it does not wish to continue to benefit from a Global Contract following the Transfer Date, the Council will (a) where requested by the Company in respect of specific Global Contracts, inform the Company as soon as practicable whether there are any penalties or costs for varying or terminating part of the Global Contract and (b) use reasonable endeavours to vary the relevant Global Contract to remove the goods/services being provided to the School as soon as reasonably practicable after the Transfer Date and, for the avoidance of doubt and without prejudice to Condition 10.5, the Council shall be under no obligation to procure that any services under the relevant Global Contract are provided to the Company
- 10.4 Where clause 10.2 or 10.3 applies and the Council is required under the relevant Global Contract to compensate ("the Compensation Sum") the contractor for terminating the Global Contract in part the Council will take all reasonable measures to satisfy itself that the Compensation Sum is properly payable under the Global Contract and will use reasonable endeavours to minimise the Compensation Sum and avoid other penalties under the Global Contract.
- 10.5 From the Transfer Date and until other arrangements are agreed pursuant to clause 10.1, and subject to the terms and conditions of each Global Contract, the Company shall meet all payment obligations of the Council relating to the services provided to the Company under the relevant Global Contract together with any reasonable costs in connection with new arrangements or variation (including any Compensation Sum) and the provisions of clause 9.7 shall apply to the Global Contracts (save that the Council may pay and discharge receipts itself and be indemnified for this by the Company where appropriate).

11 CONDUCT OF CLAIMS

11.1 In respect of the indemnities given in this Agreement:

11.1.1 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;

11.1.2 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

11.1.3 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.

12 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.

13 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.

14 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.

15 GENERAL

- 15.1 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.
- 15.2 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.
- 15.3 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be illegal or unenforceable, the other provisions will remain unaffected and in force.
- 15.4 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.
- 15.5 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).
- 15.6 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.
- 15.7 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.
- 15.8 Any notice shall be deemed to have been duly received:
- 15.8.1 if delivered personally, when left for the relevant party at the address set out at the head of this Agreement or at such other different address for service as might be notified by the relevant Party to the sender from time to time; or
 - 15.8.2 if sent by pre-paid first class post or recorded delivery, at 9.00 a.m. on the second business day after posting; or
 - 15.8.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 15.9 A notice required to be given under this Agreement shall not be validly given if sent by email.
- 15.10 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.

- 15.11 Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of this Agreement.
- 15.12 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.
- 15.13 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.

16 GOVERNING LAW AND JURISDICTION

- 16.1 This Agreement will be governed by and interpreted in accordance with the law of England and Wales.
- 16.2 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.

17 SALIX LOAN

- 17.1 Under three agreements between the Council and the Governing Body (the "Loan Agreements"), the Council loaned money to the Governing Body in respect of (i) insulation (the "First Salix Loan"), (ii) phase 1 of certain lighting works (the "Second Salix Loan") and (iii) phase 2 of certain lighting works (the "Third Salix Loan") (together the "Salix Loans"). The following sums remain outstanding under the Salix Loans:
- (i) £402.28 under the First Salix Loan;
 - (ii) £796.68 under the Second Salix Loan;
 - (iii) £50.40 under the Third Salix Loan.
- 17.2 The Company agrees to repay the outstanding amounts to the Council on or before 30 September 2014.
- 17.3 With effect from the Transfer Date, the Council releases and discharges the Governing Body from all claims and demands whatsoever (including future claims and demands) in respect of the Salix Loans and from all obligations to observe, perform, discharge and be bound by any terms of the Loan Agreements.
- 17.4 The Company indemnifies the Council against any loss, costs, claims or expenses suffered or incurred by the Council arising out of or in connection with a breach of the Company's obligation to repay the Salix Loans in accordance with clause 17.2.

Signed by _____
duly authorised on behalf of the
OXFORDSHIRE COUNTY COUNCIL

} _____

Signed by _____
duly authorised on behalf of the
**GOVERNING BODY OF FREELAND CHURCH OF ENGLAND
PRIMARY SCHOOL**

} _____

Signed by _____
duly authorised on behalf of
EYNHAM PARTNERSHIP ACADEMY

} _____

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:-

1.2.1 full name;

1.2.2 post;

1.2.3 whether the employment is full or part time;

1.2.4 sex;

1.2.5 date of birth;

1.2.6 date of commencement of service;

1.2.7 notice period;

1.2.8 normal retirement age;

1.2.9 remuneration;

1.2.10 pension;

1.2.11 in respect of teachers:

(a) scale point or leadership group spine point;

(b) assimilation point for the head teacher;

(c) whether the employee is a post-threshold teacher;

(d) whether the employee is a good honours graduate;

(e) management, recruitment, retention and/or any other allowances payable;

(f) 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:-

1.4.1 redundancy procedures and payments;

- 1.4.2 redeployment procedures;
- 1.4.3 sickness absence and sick pay entitlements;
- 1.4.4 equal opportunities;
- 1.4.5 disciplinary matters;
- 1.4.6 maternity rights;

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

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

2 COLLECTIVE BARGAINING

- 2.1 Details of the names of all trade union and other employee representatives, with the name of the trade union, the position held and how long the position was held.
- 2.2 Details of any trade union recognised by the Council / Governing Body, giving the date and details of the recognition agreement (and a copy if available), with brief details of current and historic labour relations and any pending negotiations.
- 2.3 Details of any other agreement, whether school, local or national, with any trade union or other body of employee representatives (and copies if available) including any informal recognition and procedure arrangements and other arrangements honoured by "custom and practice".
- 2.4 Details of which, if any, of the terms of any collective agreement form part of individuals' terms and conditions of employment.

3 DISPUTES

- 3.1 Details of any dispute with any employee whether brought under the Council / Governing Body's disciplinary or grievance procedure or otherwise and any matters which might give rise to such.
- 3.2 Details of any litigation threatened or pending against the Council / Governing Body, including any court, employment tribunal or arbitration claims or any matters which might give rise to such.
- 3.3 Details of any enquiry, correspondence or contact between the Council / Governing Body and the Equality and Human Rights Commission, the Health and Safety Inspector and 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**

PART 1

THE TRANSFERRING CONTRACTS

1. The contracts listed in the table below:

Trading Name of Contractor	Contract Service
Amblifex	Boiler Service contract
Barker & Evans Ltd	Boiler & Water Testing
Cannon	Sanitary disposal units
Carillion	Portable appliance testing
Chubb Fire	Fire Extinguisher Maintenance
Clean Genie	Cleaning
Cotswold Security	Alarms servicing and maintenance
Darke & Taylor	Fire alarm/emergency lighting maintenance
First News	Subscription
GLL	Swimming Pool Life Guards
Green Scythe	Grounds maintenance
Grundon Waste Management Ltd	Weekly collection/ recycling of waste
123 ICT	ICT Support Contract
Ignite Sports	PPA Cover
Kings Services	Window Cleaner
MPLC	Motion Picture Licensing Company
NACE	Membership
NAPE	Membership
Parent Mail	Service contract

Sharpe	Photocopier
RM Education	Renewal Primary Support (Server)
RM Education	Integris
SBM	Bursary Service
Schools Broadband	Broadband
Schools Safe	Staff Insurance
SI Pumps	F1 Mobile Sewage Pump maintenance
Thames Water	Water & Sewage
The Key	Subscription

2. The agreement in respect of the Freeland Partnership Foundation Stage Unit described as being entered into between the Council, the Governing Body, Trustees for the Church of England and Freeland Playgroup dated 22 October 2008. The provisions of clause 9 shall apply in relation to the rights and obligations of both the Council and the Governing Body.

PART 2

THE EXCLUDED CONTRACTS

1. The Global Contracts including the following:

Supplier	Equipment/Service
Total	Gas
Npower	Electricity
Carillion LGS Limited	Project Agreement relating to the provision of Property and Facilities (Services and Works)
Vodafone	Mobile phones
AEP (Netilla)	MYSchool (up to 12 users)

2. Sophos Anti Virus

Schedule 3

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 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 Insofar as is legally possible and save to the extent such rights are granted under an Excluded Contract, 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.

Schedule 4

The Excluded Assets

The following assets are excluded from this transfer:

- 1 The freehold titles to the playing fields.
- 2 Cash in hand or at bank (including monies held in the local expenditure account).
- 3 The benefit of any grants made to the School in respect of periods before the Transfer Date.
- 4 Any and all partnership monies.
- 5 Any and all musical instruments:
 - used by classes involved in the whole class instrumental programme delivered by the Council's Music Service which have not been purchased directly by the School;
 - stored at the School for use at Saturday and evening Music Centres sited at the School; and
 - on direct loan to pupils from the Council.
- 6 All Oxfordshire Community Network (OCN) equipment sited on the School's premises, including but not limited to the router, cabinet, circuit and cabling.

Schedule 5
Employee Schedule as supplied on 9 May 2014