Nottinghamshire County Council

SERVICES FOR SCHOOLS (ACADEMIES) TERMS AND CONDITIONS

BACKGROUND

The Academy has engaged the Council to provide the Services through the Council's Services to Schools Catalogue using an Interactive Order Form.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

Academy: the Academy purchasing the Services from the Council as detailed in the Interactive Order Form.

Academy's Equipment: any equipment, systems, cabling or facilities provided by the Academy and used directly or indirectly in the supply of the Services.

Academy's Representative: the Academy's Representative for the Services, appointed in accordance with clause 4.1.

Appropriate Pension Provision: in respect of Assumed Employees, either:

(i) membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or

(ii) pension scheme, which is certified by the Government Actuary's Department as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members.

Assumed Employees: those employees employed by the Council wholly or mainly engaged in the provision of the Services as at the Transfer Date who will transfer to the Academy or new supplier.

Council: Nottinghamshire County Council of County Hall, Loughborough Road, West Bridgford, Nottingham, NG2 7QP.

Deliverables: all Documents, products and materials developed by the Council or its agents, subcontractors, consultants and employees in relation to the Services in any form, including but not limited to computer programs, data, reports and specifications (including drafts) and/or as detailed in Interactive Order Form and Services for Schools Catalogue.

Direct Losses: all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law;

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Force Majeure Event: any cause affecting or delaying the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered a Force Majeure Event if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.

In-put Material: all Documents, information and materials provided by the Academy relating to the Services, including but not limited to computer programs, data, reports and specifications.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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 right, 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.

Interactive Order Form: the electronic method of ordering services under the Services for Schools Catalogue.

Learner: children attending the Academy whether directly using the Services or not.

Pre-existing Materials: all Documents, information and materials provided by the Council relating to the Services which existed prior to the commencement of these terms and conditions, including but not limited to computer programs, data, reports and specifications.

Quotation: the quotation provided by the Council to the Academy in response to the submission of an Interactive Order Form.

Service(s): one, or any number of different services to be provided by the Council to the Academy under these terms and conditions as set out in Interactive Order Form and further detailed in the Services for Schools Catalogue.

Special Conditions: any conditions that are specific to the particular Service being provided by the Council to the Academy.

Council's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Council or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Academy.

Council's Representative: the Council's Representative for the Services appointed under clause 3.3.

Relevant Transfer: a relevant transfer for the purposes of TUPE

Term: the duration of the provisions of the Services as set out in clause 2.1.

Transfer Date: means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services from the Council to the Academy or a new supplier (as the case may be);

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

Working Day: 9am to 5pm Monday to Friday excluding English Bank Holidays.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these terms and conditions.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 The schedules form part of these terms and conditions and shall have effect as if set out in full in the body of these terms and conditions. Any reference to these terms and conditions includes the schedules.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 Where the words **include(s)**, **including** or **in particular** are used in these terms and conditions, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.8 Any obligation in these terms and conditions on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.9 References to clauses and Schedules are to the clauses and schedules of these terms and conditions.

2. COMMENCEMENT AND DURATION

2.1 These terms and conditions shall commence on the 1st April in any year or on the date stated in the Interactive Order Form and shall continue until it is terminated in accordance with clause 2.2 or clause 10.

2.2 The Services supplied under these terms and conditions shall continue to be supplied for the Term unless these terms and conditions is terminated by one of the parties giving to the other not less than 6 months' notice or unless these terms and conditions is terminated in accordance with clause 10.

2.3 In the event of any conflict or inconsistency between these terms and conditions and those in a Schedule or Interactive Order Form or Services for Schools Catalogue priority and the order of precedence of the component parts of these terms and conditions shall be:

(a) the Quotation

(b) the Interactive Order Form;

(c) the Special Conditions;

(d) these terms of these terms and conditions; and

(e) the Services for Schools Catalogue.

3. COUNCIL'S OBLIGATIONS

3.1 The Council shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Academy, in accordance with the Quotation, Interactive Order Form and Services for Schools Catalogue in all material respects.

3.2 The Council shall use reasonable endeavours to meet any performance dates specified in Interactive Order Form, but any such dates shall be estimates only and time for performance by the Council shall not be of the essence of these terms and conditions.

3.3 The Council shall appoint the Council's Representative for each Service supplied (whose contact details will be provided to the Academy or are detailed in the Services for Schools Catalogue) who shall act as the initial point of contact in relation to the Services. The Council may replace him from time to time where reasonably necessary in the interests of the Council's business.

3.4 The Council shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Academy's premises and that have been communicated to it under clause 4.1(e), provided that it shall not be liable under these terms and conditions if, as a result of such observation, it is in breach of any of its obligations under these terms and conditions.

3.5 For the Term of these terms and conditions and a period of 6 years thereafter, the Council shall maintain satisfactory insurance cover (including but not limited to public liability, professional indemnity and employers liability) with a reputable insurer in respect of all liabilities, both statutory and contractual, arising from these terms and conditions.

3.6 The Council shall co-operate with and provide information to the Academy, as requested, to give assurance that adequate arrangements exist for Learner health and safety.

3.7 The Council shall comply with the safeguarding provisions contained in clause 29 of these terms and conditions.

4. ACADEMY'S OBLIGATIONS

4.1 The Academy shall:

(a) co-operate with the Council in all matters relating to the Services and appoint the Academy's Representative (whose contact details will be provided to the Council) in relation to the Services;

(b) provide, for the Council, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Academy's premises, office accommodation, data and other facilities as reasonably required by the Council;

(c) provide, in a timely manner, such In-put Material and other information as the Council may reasonably require, and ensure that it is accurate in all material respects;

(d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services (where applicable), including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Council of all of the Academy's obligations and actions under this clause 4.1(d);

(e) inform the Council of all health and safety rules and regulations and any other reasonable security requirements that apply at the Academy's premises;

(f) ensure that all the Academy's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;

(g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Council's Equipment, the use of In-put Material and the use of the Academy's Equipment in relation to the Council's Equipment and the delivery of the Services, in all cases before the date on which the Services are to start; and

(h) comply with any Special Conditions.

4.2 If the Council's performance of its obligations under these terms and conditions is prevented or delayed by any act or omission of the Academy, its agents, subcontractors, consultants or employees, the Council shall not be liable for any costs, charges or losses sustained or incurred by the Academy that arise directly or indirectly from such prevention or delay.

4.3 The Academy shall be liable to pay to the Council, on demand, all reasonable costs, charges or losses sustained or incurred by the Council (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Academy's fraud, negligence, failure to perform or delay in the performance of any of its obligations under these terms and conditions, subject to the Council confirming such costs, charges and losses to the Academy in writing.

5. PAYMENT

5.1 In consideration of the provision of the Services by the Council, the Academy shall pay the Council for the Services provided (on a periodic payment basis) at the price stated in the Interactive Order Form and/or Services for Schools Catalogue or otherwise agreed between the parties.

5.2 Without prejudice to any other right or remedy that it may have, if the Academy fails to pay the Council on the due date, the Council may:

(a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base rate from time to time of Co-operative Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Academy shall pay the interest immediately on demand; and

(b) suspend all Services until payment has been made in full.

5.3 All sums payable to the Council under these terms and conditions shall become due immediately on its termination, despite any other provision. This clause 5.4 is without prejudice to any right to claim for interest under the law, or any such right under these terms and conditions.

5.4 Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party under these terms and conditions against any amounts payable by it to the other party under these terms and conditions.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 As between the Academy and the Council, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Council. Subject to clause 6.2, the Council licenses all such rights to the Academy free of charge and on a non-exclusive basis to such extent as is necessary to enable the Academy to make reasonable use of the Deliverables and the Services. If these terms and conditions is terminated, this licence will automatically terminate.

6.2 The Academy acknowledges that, where the Council does not own any of the Pre-existing Materials, the Academy's use of rights in Pre-existing Materials is conditional on the Council obtaining a written

licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Council to license such rights to the Academy.

7. CONFIDENTIALITY AND THE COUNCIL'S PROPERTY

7.1 The Academy shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Academy by the Council, its employees, agents, consultants or subcontractors and any other confidential information concerning the Council's business or its products which the Academy may obtain.

7.2 The Academy may disclose such information:

(a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Academy's obligations under these terms and conditions; and

(b) as may be required by law, court order or any governmental or regulatory authority.

7.3 The Academy shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 7.

7.4 The Academy shall not use any such information for any purpose other than to perform its obligations under these terms and conditions.

7.5 All materials, equipment and tools, drawings, specifications and data supplied by the Council to the Academy (including Pre-existing Materials and the Council's Equipment) shall, at all times, be and remain the exclusive property of the Council, but shall be held by the Academy in safe custody at its own risk and maintained and kept in good condition by the Academy until returned to the Council, and shall not be disposed of or used other than in accordance with the Council's written instructions or authorisation.

8. LIMITATION OF LIABILITY

8.1 This clause 8 sets out the entire financial liability of the Council (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Academy in respect of:

(a) any breach of these terms and conditions however arising;

(b) any use made by the Academy of the Services, the Deliverables or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms and conditions.

8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these terms and conditions.

8.3 Nothing in these terms and conditions limits or excludes the liability of the Council:

(a) for death or personal injury resulting from negligence; or

(b) for any damage or liability incurred by the Academy as a result of fraud or fraudulent misrepresentation by the Council.

8.4 Subject to clause 8.2 and clause 8.3:

(a) the Council shall not under any circumstances whatever be liable for:

(i) loss of profits; or

(ii) loss of business; or

(iii) depletion of goodwill and/or similar losses; or

(iv) loss of anticipated savings; or

(v) loss of goods; or

(vi) loss of contract; or

(vii) loss of use; or

(viii) loss of corruption of data or information; or

(ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

(b) the Council's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or

contemplated performance of these terms and conditions shall in all circumstances be limited to the price paid for the Services.

9. DATA PROTECTION

9.1 Each party shall comply with the requirements of the Data Protection Act 1998 in relation to the provision or use of the services, and shall not knowingly or negligently take any action that might lead to a breach by the other party.

10. TERMINATION

10.1 Subject to clause 10.3 these terms and conditions if the Interactive Order Form provides an expiry date these terms and conditions shall terminate automatically on that expiry date.

10.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate these terms and conditions without liability to the other immediately on giving notice to the other if:

(a) the other party fails to pay any amount due under these terms and conditions on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or

(b) the other party commits a breach of any of the terms of these terms and conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(c) the other party repeatedly breaches any of the terms of these terms and conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of these terms and conditions; or

(d) if a receiving order shall be made against the other party or if the other party shall become bankrupt or insolvent or shall compound with or assign in favour of creditors or (being an incorporated company) shall resolve to wind up to be ordered to be wound up or shall carry on business under a Receiver or the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

10.3 On termination of these terms and conditions for any reason:

(a) the Academy shall immediately pay to the Council all of the Council's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Council may submit an invoice, which shall be payable immediately on receipt;

(b) the Academy shall, within a reasonable time, return all of the Council's Equipment, Pre-existing Materials and Deliverables. If the Academy fails to do so, then the Council may enter the Academy's premises and take possession of them. Until they have been returned or repossessed, the Academy shall be solely responsible for their safe keeping;

(c) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: clause 6 (Intellectual property rights), clause 7 (Confidentiality and the Council's property), clause 8 (Limitation of liability), clause 10.3, clause 20 (Notices), clause 21 (Dispute resolution), clause 22 (Governing law and jurisdiction).

11. FORCE MAJEURE

11.1 Neither party shall be in breach of these terms and conditions nor liable for delay in performing, or failure to perform, any of its obligations under these terms and conditions if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three months, the party not affected may terminate these terms and conditions by giving 14 days' written notice to other party.

12. VARIATION

12.1 No variation of these terms and conditions shall be valid unless it is done in writing and notified to the Academy on 30 days notice.

13. WAIVER

13.1 A waiver of any right or remedy under these terms and conditions is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under these terms and conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

13.2 No single or partial exercise of any right or remedy provided under these terms and conditions or by law shall preclude or restrict the further exercise of any such right or remedy.

14. CUMULATIVE REMEDIES

Unless specifically provided otherwise, rights arising under these terms and conditions are cumulative and do not exclude rights provided by law.

15. SEVERANCE

15.1 If any provision of these terms and conditions (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the agreement, and the validity and enforceability of the other provisions of the agreement shall not be affected.

15.2 If a provision of these terms and conditions (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16. ENTIRE AGREEMENT

16.1 The Quotation, Interactive Order Form, Special Condition, Services for Schools Catalogue and these terms and conditions together constitute the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of these terms and conditions.

16.2 Each party acknowledges that, in entering into these terms and conditions, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in these terms and conditions. Each party agrees that its only liability in respect of those representations and warranties that are set out in these terms and conditions (whether made innocently or negligently) shall be for breach of contract.

16.3 Nothing in this clause shall limit or exclude any liability for fraud.

17. ASSIGNMENT

17.1 The Academy shall not, without the prior written consent of the Council, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under these terms and conditions.

17.2 The Council may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under these terms and conditions.

17.3 Each party that has rights under these terms and conditions is acting on its own behalf and not for the benefit of another person.

18. NO PARTNERSHIP OR AGENCY

Nothing in these terms and conditions is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19. RIGHTS OF THIRD PARTIES

Save for as provided for in clause 24 a person who is not a party to these terms and conditions shall not have any rights under or in connection with it.

20. NOTICES

20.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service, to the either the Council's Representative or the Academy's Representative respectively at the addresses detailed in the Quotation and/or Interactive Order Form.

20.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by fax, at 9.00 am on the next Working Day after transmission, or otherwise at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

21. DISPUTE RESOLUTION

21.1 If any dispute arises in connection with these terms and conditions, the Council's Representative and the Academy's Representative shall, within 7 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

21.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by referring the matter to the Corporate Director for the Children Families and Cultural Services Department and the Business Manager (or equivalent) of the Academy who will meet in a good faith effort to resolve the matter within 30 days of referral.

21.3 If the matter is not resolved through negotiation either Party may refer the matter to mediation.

22. GOVERNING LAW AND JURISDICTION

22.1 These terms and conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these terms and conditions or its subject matter or formation (including non-contractual disputes or claims).

23. FREEDOM OF INFORMATION

23.1 Each party acknowledges that the other is deemed a public authority and is subject to the Freedom of Information Act 2000 (“the FOIA”) and the Environmental Information Regulations 2004 (“the EIR”) and shall assist and co-operate with each other to comply with these information disclosure requirements.

23.2 The parties shall inform the other within 5 days of receiving a request for information or class of information relating to these terms and conditions under the FOIA and/or the EIR where a Party requires assistance from the other dealing with such a request.

23.3 The parties further acknowledge that they may be required to disclose information concerning the other Party and/or these terms and conditions in discharging their obligations under the FOIA and/or the EIR. The party, having used reasonable endeavours to consult the other Party and having considered the other party’s views, shall be responsible for determining at its absolute discretion, whether the information should be disclosed under the FOIA and/or the EIR or whether an exemption from disclosure applies.

24. EMPLOYMENT IMPLICATIONS

24.1 The Parties acknowledge and agree that where any Services cease to be provided by the Council for any reason and where any Services continue to be provided by the Academy and/or a new supplier, there may be a Relevant Transfer of the those employees wholly or mainly engaged in the provision of the Services to the Academy and/or the new supplier for the purposes of TUPE. If there is such a transfer, the employment of those employees shall transfer to the Academy and/or the new supplier in accordance with TUPE with effect from the Transfer Date.

24.2 Save where the Parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the Parties shall co-operate in agreeing a list of employees prior to the Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the employees to the Academy and/or the new supplier.

24.3 The Council shall indemnify the Academy (both for itself and a new supplier) for and against all reasonable and properly incurred claims, costs, expenses or liabilities incurred or suffered by the Academy and/or new supplier including without limitation all reasonable and properly incurred legal expenses and other reasonable professional fees (together with any VAT thereon) in relation to:

(a) the termination by the Council of the employment of any of the Assumed Employees prior to the Transfer Date;

(b) anything done or omitted to be done by the Council prior to the Transfer Date in respect of any of the Assumed Employees ;

(c) any claim made prior to the Transfer Date by any employee of the Council other than the Assumed Employees who claim to have become an employee of or have rights against the Provider by virtue of the TUPE Regulations ("Claims").

provided that in relation to sub-clauses 24.3(a). to 24.3(c) above such costs, claims, expenses and liabilities do not arise in whole or in part as a result of any act or omission of the Academy or new supplier or any proposed or actual substantial change by the Academy or new supplier to the employee's working conditions or any proposed or actual measures of the Academy or new suppliers that are to the Assumed Employee's material detriment.

24.4 Where any liability in relation to any of the Assumed Employees, in respect of his or her employment by the Council or its termination which transfers in whole or part in accordance with the TUPE Regulations arises partly as a result of any act or omission occurring on or before the Relevant Transfer Date and partly as a result of any act or omission occurring after the Relevant Transfer Date, the Council shall indemnify and keep indemnified in full the Academy and/or new supplier against only such part of the losses sustained by the Academy and/or new supplier in consequence of the liability as is reasonably attributable to the act or omission occurring before the Transfer Date and the Academy and/or new supplier shall indemnify and keep indemnified in full the Council against only such part of the losses sustained by the Council in consequence of any liability as is reasonably attributable to the act or omission occurring after the Transfer Date.

24.5 The Academy and/or new supplier shall indemnify the Council in full for and against all reasonable and properly incurred claims, costs expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Council including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

(a) any failure by the Academy and/or new supplier to comply with its obligations pursuant to the TUPE Regulations;

(b) anything done or omitted to be done by the Academy and/or new supplier in respect of any of the Assumed Employees after the Transfer Date;

(c) any claim by an Employee that any proposed or actual substantial change by the Academy and/or new supplier to the Assumed Employee's working conditions or any proposed or actual measures of the Academy and/or new supplier are to that Assumed Employee's material detriment whether such claim arises before or after the Transfer Date;

(d) any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Academy and/or new supplier to the Assumed Employees or their representatives whether before on or after the Transfer Date and whether liability for any such claim arises before on or after the Transfer Date.

24.6 The Academy and/or new supplier shall indemnify the Council and keep the Council indemnified in full against all Direct Losses incurred by the Council in connection with or as a result of:

(a) any claim by any Assumed Employee under Regulation 4(9) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 whether such claim arises before or after the Transfer Date;

(b) any claim by any Assumed Employee that any proposed or actual change by the Academy and/or new supplier to the Assumed Employees' working conditions or employment, or any proposed measures of the Academy and/or new supplier are to that employee's detriment or amount to an actual or repudiatory breach of contract whether such claim arises before or after the Transfer Date; and

(c) any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Academy and/or new supplier to the Assumed Employees or their representatives whether before on or after the Transfer Date and whether liability for any such claim arises before on or after the Transfer Date.

24.7 The Academy and/or new supplier shall be liable for and indemnify and keep indemnified the Council against any failure to meet all remuneration, benefits, entitlements and outgoings for the Assumed Employees and any other person who is or will be employed or engaged by the Academy and/or new supplier in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Transfer Date.

24.8 The Academy and/or new supplier shall ensure that all Assumed Employees are offered Appropriate Pension Provision with effect from the Transfer Date.

24.9 The Academy shall, when re-commissioning the Services or any part of them, ensure that they fully consider and address all issues to do with pensions liabilities in relation to any staff that may TUPE transfer to any new supplier including but not limited to employer contributions, bonds and fair deal if applicable.

24.10 The provisions of sub-clauses 24.8 and 24.9 shall be directly enforceable by an affected employee against the Academy and/or new supplier.

25. CONFLICTS OF INTEREST

The Council may also provide Services to the Council and is not able to act on behalf of the Academy in any matter in which the Academy's interests and those of the Nottinghamshire County Council are in conflict or become in conflict. In such circumstances, the Academy shall report such conflict immediately to the Council and the Academy need to seek separate advice or Services at its own cost.

26. ARRANGEMENTS FOR DOCUMENT STORAGE

Whilst the Council has an on-going agreement with the Academy, the files which are created for the provision of the Services to the Academy, will be retained for varying periods of time in accordance with any document records and document management policies and the prevailing legislative requirements. Copies of these are available on request. On termination of these terms and conditions, the Council reserves the right to request that the Academy take possession of the files which were created by solely for the provision of the Services to the Academy.

27. USE OF EXTERNAL EXPERTS AND ALTERNATIVE PROVIDERS

Unless otherwise stated in the Schedules; where a Service requires advice of a highly specialised nature, as decided by the Council, it may be desirable for the Council to engage an external expert to supply advice, assistance or representation. Prior to instructing such persons the Council will advise the Academy and, where possible, indicate the likely costs. The costs incurred by such an instruction will be the Academy's responsibility as an expense.

28. STATUTORY RESPONSIBILITY AND INVESTIGATIONS.

28.1 The Academy shall comply with all its statutory obligations including the Bribery Act 2010 and shall indemnify the Council in the event of none compliance.

28.2 The Academy shall if requested by the Council provide to the Council any relevant information including documentation and statements from employees in connection with any Ombudsman investigation, external audit of the Council and any inspection or investigation undertaken by any Governmental department, agency, inspectorate or other body in which the Council may become involved arising out of provision of the Services.

29. CRB CHECKS/SAFEGUARDING

29.1 The Council shall adopt recruitment processes that comply with the law and will ensure that children, young people and vulnerable Learners are protected. The Council will take the necessary actions in order to comply with current vulnerable groups legislation and safeguarding requirements, will register with the Criminal Records Bureau ("CRB") where their employees may have regular contact with Learners under 18 or other vulnerable Learners and make the appropriate checks to ensure that employment that involves regular contact with young people under the age of 18 or other vulnerable learners is not offered or held by anyone who has been convicted of certain specified offences, or whose name is included on lists of people considered unsuitable for such work held by the Department for Education and the Department of Health. The Council will carry out CRB checks on all overseas applicants for employment and seek additional information about an applicant's conduct. The Council will review their records and be able to demonstrate that they have robust record-keeping procedures through checks on record keeping undertaken.

29.2 Criminal Records Bureau Record Check must not be disclosed by the Council. Such records may only be disclosed with the prior written consent of the member of employees upon whom the check was carried out.

29.3 The Council must fully comply with the CRB Code of Practice and the Explanatory Guide for Registered Persons and other recipients of Disclosure Information.

29.4 Irrespective of the CRB requirements, the Council will undertake a full vetting procedure before engaging new employees or deploying existing or new employees upon any Services which require the Employees to have direct and/or unsupervised contact with Learners.

29.5 The Council shall only use suitably qualified and competent individuals in the execution of the Services and shall ensure that all of its employees engaged in the provision of the Services adopt a professional manner at all times.

29.6 The Council shall ensure that all of the Council employees and all persons performing any Services which require the employees to have direct and/or unsupervised contact with Learners are subject to an Enhanced Criminal Records Bureau check in accordance with Part V of the Police Act 1997 as amended which shall in respect of each person include:

(a) a search of the Children's Barred List held pursuant to Section 2(1)(a) of the Safeguarding Vulnerable Groups Act 2006; and

(b) a search of the Adults Barred List held pursuant to Section 2(1)(b) of the Safeguarding Vulnerable Groups Act 2006 where the performance of the Service may involve contact with Vulnerable Adults (as defined by section 59 of the Safeguarding Vulnerable Groups Act 2006).

29.7 The Council shall ensure that any person, who is found to have any convictions following the results of a Criminal Records Bureau check, is not employed or engaged by the Council or on the Council's behalf in respect of the performance of Services which require the employees to have direct and/or unsupervised contact with Learners without the Academy's prior written consent.

29.8 The Council shall ensure that the Academy is immediately notified in writing in the event that any employee of the Council or other person engaged in the performance of Services which require the employees to have direct and/or unsupervised contact with Learners subsequent to his/her commencement of employment with the Council, receives a conviction or whose previous convictions become known to the Council.