

Dated **2016**

controlled

(1) THE DERBYSHIRE COUNTY COUNCIL

- and -

(2) THE TWO COUNTIES TRUST

LEASE

Property: **Swanwick Hall School Swanwick
Alfreton DE55 1AE**

Term: **125 years**

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LAND REGISTRY REQUIRED WORDING FOR PRESCRIBED CLAUSES LEASE⁴

LR1. Date of lease:

LR2. Title number(s):

LR2.1 Landlord's title number(s):

DY443409

LR2.2 Other title number(s):

None

LR3. Parties to this lease:

Landlord:

The Derbyshire County Council of County Hall
Matlock Derbyshire DE4 3AG

Tenant:

The Two Counties Trust whose registered
office is at Ashfield School, Sutton Road,
Kirkby-in-Ashfield, Nottingham,
Nottinghamshire, NG17 8HP (Company
Registration Number: 07972029)

LR4. Property:

(referred to in the
remainder of this
lease as the
"Property") In the
case of a conflict
between this clause
and the remainder of
this lease then for
the purposes of
registration, this
clause shall prevail

Please see the definition of "Property" in
clause 1.1

**LR5. Prescribed
statements etc:**

LR5.1 Statements prescribed under rules 179
(dispositions in favour of a charity), 180
(dispositions by a charity) or 196 (leases
under the Leasehold Reform, Housing and
Urban Development Act 1993) of the Land
Registration Rules 2003:

The statements contained in clause 10 of this
Lease

**LR6. Term for which the
Property is leased:**

(referred to in the
remainder of this

The term is as follows: 125 years from and
including 1st April 2016

lease as the "Term")

- LR7. Premium:** None
- LR8. Prohibitions or restrictions on disposing of this lease:** This lease contains a provision that prohibits or restricts dispositions
- LR9. Rights of acquisition etc:**
- LR9.1** Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land:
None
- LR9.2** Tenant's covenant to (or offer to) surrender this lease:
None
- LR9.3** Landlord's contractual rights to acquire this lease:
None
- LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property:** None
- LR11. Easements:**
- LR11.1** Easements granted by this lease for the benefit of the Property:
The easement(s) set out in Schedule 2 to this lease
- LR11.2** Easements granted or reserved by this lease over the Property for the benefit of other property
The easement(s) set out in Schedule 3 to this

lease

**LR12. Estate rentcharge
burdening the
Property:**

None

**LR13. Application for
standard form of
restriction:**

The Parties to this lease apply to enter the following standard form N restriction against the title of the Property:

“No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT”

**LR14. Declaration of trust
where there is more
than one person
comprising the
Tenant:**

Not applicable

THIS LEASE is made the day of2016

BETWEEN:

- (1) **The Derbyshire County Council** of County Hall Matlock Derbyshire DE4 3AG ("the **Landlord**")
- (2) **The Two Counties Trust** (Company No 07972029) whose registered office is at Ashfield School, Sutton Road, Kirkby-in-Ashfield, Nottingham, Nottinghamshire, NG17 8HP

NOW IT IS HEREBY AGREED as follows:-

PART A: PRELIMINARY

1. Definitions and Interpretation

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

"Amenities" drainage water gas electricity telephone and any other services or amenities of like nature;

"Conduits" gutters gullies pipes sewers drains watercourses channels ducts flues wires aerials cables mains cisterns tanks and all other conducting media together with all meters and other apparatus used in connection with them;

"End Date" the date that falls 90 working days after the Funding Termination Date;

"Environment Acts" the Environmental Protection Act 1990, the Environment Act 1995, the Water Resources Act 1991, the Water Industry Act 1991 and any other Law or Laws of a similar nature in force at any time during the Term;

"Fixtures and Fittings" **and** all fixtures and fittings in or upon the Property to include plant and machinery lifts boilers central heating air conditioning lighting plumbing sanitary and sprinkler systems hardware and cabling of computer systems and any other apparatus from time to time in or upon the Property;

"Funding Agreement" (a) an agreement pursuant to Section 1 of the Academies Act 2010 made between (1) the Secretary of State for Education and (2) the Tenant supplemental to a Master Funding Agreement made between the same parties; and
(b) any replacement or renewal of such agreement between the same parties and in substantially the

same form; and

- (c) any replacement agreement made between the Tenant and the Secretary of State for Education (or the successor government body which assumes his functions for funding educational organisations of the Tenant's kind) and which provides funding for the Tenant in relation to the operation of educational services at the Property;

“Funding Termination Date”

the date that falls 30 working days after the termination of the Funding Agreement;

“Insured/Covered Risks”

fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Tenant insures against from time to time or are covered by the Risk Protection Arrangement of which the Tenant is a member, Subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters or by the terms of the Risk Protection Arrangement, provided that if in respect of any period of time the Tenant is unable to effect insurance against any one or more of such risks upon terms or at a premium which the Tenant considers reasonable or if the risks are not covered by the Risk Protection Arrangement of which the Tenant is a member then during such period such risk or risks are deemed to be excluded from the definition of "Insured/Covered Risks";

"Interest"

interest at the rate of 4 per cent per annum above Lloyds Bank plc Base Rate for the time being in force (both before and after any judgment) such interest to be compounded with rests on the usual quarter days or if such Base Rate ceases to be published then at the rate of 1 per cent per annum above the rate at which the Landlord could reasonably borrow from time to time;

“Landlord’s Property”

land and buildings including the Property registered at the Land Registry under Title Number DY443409;

"Law"

any statute or any order instrument or regulation made under it or any notice or order issued by a government department the legislative making institutions of the European Union minister or local public regulatory or other authority;

"Lease"

this Lease as varied from time to time together with any other deed document or agreement at any time during the Term amending supplemental or collateral to it;

"Outgoings"	all present and future rates taxes duties charges assessments impositions and outgoings whatsoever (whether parliamentary local or of any other description including capital or non-recurring and including any novel expenses);
"Plan"	the plan annexed to this Lease;
"Planning Acts"	the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Hazardous Substances) Act 1990 the Planning (Consequential Provisions) Act 1990 the Planning and Compensation Act 1991 the Planning and Compulsory Purchase Act 2004 and any other Law or Laws of a similar nature in force at any time during the Term;
"Premises Acts"	the Occupiers' Liability Act 1957 the Factories Act 1961 the Offices Shops and Railway Premises Act 1963 the Fire Precautions Act 1971 the Defective Premises Act 1972 the Health and Safety at Work etc. Act 1974 the Occupiers' Liability Act 1984 and any other Law or Laws regulating the safety of premises and those occupying or visiting the same in force at any time during the Term;
"President"	the President of the Institution of Chartered Surveyors;
"Property"	the property described in Part 1 Schedule 1;
"Reinstatement Value"	<p>the full cost of reinstating the Property including:-</p> <ul style="list-style-type: none"> (a) temporarily making the Property safe and protecting any adjoining structures; (b) debris removal demolition and site clearance; (c) obtaining planning and any other requisite consents or approvals; (d) complying with the requirements of any Law; (e) architects' surveyors' and other fees incurred by the Tenant in relation to the reinstatement; (f) all construction costs; (g) any VAT chargeable on any of the reinstatement costs (save where the Tenant is able to recover such VAT as an input in relation to supplies made by the Tenant);
"Relevant Secretary of State"	such secretary of state or Minister of the Crown as may be nominated by the Secretary of State for Education to

	take an assignment of this Lease;
"Rent"	a peppercorn;
"Retained Land"	the adjoining land of the Landlord described in Part 2 Schedule 1;
"Risk Protection Arrangement"	arrangements to cover certain risks as operated by the Department for Education.
"Secretary of State for Education"	the Secretary of State for Education or such other Minister of the Crown who is a successor to such person and who is party to the Funding Agreement with the Tenant at the relevant time;
"Term"	125 years from and including the Term Commencement Date;
"Term Commencement Date"	1 st April 2016
"Termination Date"	the date of expiration or sooner determination of the Term;
"the 1954 Act"	the Landlord and Tenant Act 1954;
"the 1995 Act"	the Landlord and Tenant (Covenants) Act 1995;
"VAT"	Value Added Tax or any equivalent tax which may at any time during the Term be imposed in substitution for it or in addition to it and all references to rents or other sums payable by the Tenant are exclusive of VAT.

1.2 In interpreting this Lease:-

- 1.2.1 references to Clauses pages and Schedules are to Clauses and pages of and Schedules to this Lease unless stated otherwise;
- 1.2.2 the expression "Landlord" includes the person for the time being entitled to the immediate possession of the Property on the expiry of the Term;
- 1.2.3 the expression "Tenant" includes the person in whom for the time being the Tenant's interest under this Lease is vested;
- 1.2.4 where reference is made to a statute this includes all prior and subsequent enactments amendments and modifications

relating to that statute and any subordinate legislation made under such statute;

- 1.2.5 references to a "person" include any individual firm unincorporated association or body corporate and words importing the singular number include the plural number and vice versa and words importing one gender include all genders;
- 1.2.6 if the Tenant is or are at any time more than one person any reference to the Tenant is deemed to refer to each such person and any obligation on the part of the Tenant takes effect as a joint and several obligation;
- 1.2.7 any covenant by the Tenant not to carry out any action is to be construed as if it is (where appropriate) additionally a covenant by the Tenant not to permit or suffer such action to be done;
- 1.2.8 the words "include" and "including" are to be construed without limitation and in construing this Lease the ejusdem generis principle does not apply and general words are not to be given a restrictive meaning because they are followed by particular examples intended to be embraced by the general words;
- 1.2.9 a reference to an act or omission of the Tenant includes an act or omission of any undertenant and any other person deriving title under the Tenant and includes an act or omission of their respective employees and visitors and anyone at the Landlord's Property with the express or implied authority of any one or more of them;
- 1.2.10 a reference to the Property includes any part of it except where the word is used in Clause 3.12;
- 1.2.11 a reference to the end of the Term or to the Termination Date is to the end of the Term however it terminates;
- 1.2.12 a consent of the Landlord shall be valid if it is either:
 - (a) given in writing and signed by a person duly authorised on behalf of the Landlord; or
 - (b) (if required by the Landlord after any request for consent from the Tenant but prior to consent being given) it is by deed; andif a consent is not by deed it will not affect the Landlord's ability to require that any other consent should be by deed;
- 1.2.13 any notice given to the Landlord shall not be valid unless it is in writing;
- 1.2.14 the Landlord is entitled to withhold its consent where it requires the corresponding consent of any mortgagee or superior landlord of the Property until it obtains that consent (and the Landlord shall use all reasonable endeavours to obtain such consent and shall ensure that any charges or superior leases

created after the date of this Lease shall contain obligations on the mortgagee or superior landlord not unreasonably to withhold or delay consent in circumstances where the Landlord's consent cannot be unreasonably withheld or delayed under this Lease);

- 1.2.15 a right of the Landlord or anyone else to have access to or entry upon the Property extends to any superior landlord and any mortgagee of the Landlord's Property and to anyone authorised by the Landlord or any superior landlord or mortgagee and includes a right of entry with workmen equipment and materials;
- 1.2.16 the table of contents and headings to Clauses paragraphs and Schedules do not affect the construction of this Lease;
- 1.2.17 a right granted by the Landlord is granted in common with all other persons entitled to it and/or authorised by the Landlord to exercise it;
- 1.2.18 a right excepted or reserved to the Landlord is also reserved to any other person entitled to it and/or authorised by the Landlord;
- 1.2.19 where the Landlord is entitled to enter the Property on giving notice it is also entitled to enter without notice in emergency and may break and enter if it considers it necessary;
- 1.2.20 nothing entitles the Tenant to enforce any obligation given by anyone to the Landlord;
- 1.2.21 any person undertaking any obligation under or by virtue of this Lease which is a 'landlord covenant' for the purposes of the 1995 Act does so only in respect of the period of time during which the immediate reversion to this Lease is vested in such person and not further or otherwise;
- 1.2.22 any works (whether of repair decoration alteration or otherwise) that the Tenant is permitted or obliged to carry out in accordance with this Lease shall be carried out in accordance with good modern practice;
- 1.2.23 a provision of this Lease which is void or unenforceable shall be severed from all other provisions of this Lease and the remaining provisions shall continue to have effect;
- 1.2.24 if a provision of this Lease extends beyond the limitations set by any Law or rule of law but if it were not so extended would remain unaffected by the Law or rule of law the provision is deemed to be varied so as not to extend beyond the limitations;
- 1.2.25 if any matter is referred to arbitration pursuant to this Lease:
 - (a) it is to be conducted in accordance with the Arbitration Act 1996; and

- (b) the arbitrator has no power:
 - (i) to order rectification setting aside or cancellation of this Lease;
 - (ii) to direct that the recoverable costs of the arbitration or any parts of the arbitral proceedings will be limited to a specific amount;
 - (iii) where there are provisions in this Lease for the payment of interest at a specified rate to award interest whether in addition to or in substitution for such interest provisions;

1.2.26 if any matter in this Lease is to be determined by an arbitrator:

- (a) he is to be appointed by agreement between the Landlord and the Tenant or at the request and option of either of them is to be nominated by the President;
- (b) if he dies delays or declines to act the President may on the application of either the Landlord or the Tenant discharge him and appoint another to act in his place in the same capacity; and
- (c) if either the Landlord or the Tenant pays his fees and expenses it may recover the proportion (if any) the other party was obliged to pay from that other party as a debt recoverable on demand;

1.2.27 wherever and to the extent that any provision of this Lease would or might contravene the provisions of section 25 of the 1995 Act then:-

- (a) such provision is to take effect only in so far as it may do so without contravening section 25 of the 1995 Act (and where such provision extends beyond the limits permitted by section 25 of the 1995 Act that provision is to be varied so as not to extend beyond those limits); and
- (b) where such provision is incapable of having any effect without contravening section 25 of the 1995 Act this Lease is to be construed and interpreted as if such provision were deleted; and
- (c) the legality validity and enforceability of any of the remaining provisions of this Lease is not in any way to be affected or impaired as a result.

2. Demise Rents and Other Payments

- 2.1 The Landlord demises the Property to the Tenant for the Term (subject to the provisions for earlier termination contained in this Lease) the Tenant paying therefor by way of rent throughout the Term

without any deduction counterclaim or set off (whether legal or equitable) of any nature whatsoever:-

2.1.1 the Rent (if demanded);

2.1.2 all other sums (including VAT) due under this Lease from the Tenant to the Landlord.

2.2 The Property is demised:-

2.2.1 together with the rights specified in Schedule 2

2.2.2 excepting and reserving to the Landlord and all others now entitled (or who may become entitled) and all others authorised by them (to include any adjoining or neighbouring owners or occupiers) as specified in Schedule 3; and

2.2.3 subject to and with the benefit of the matters contained or referred to in the documents listed in Schedule 4 insofar as the same are still subsisting and capable of being enforced and relate to or affect the Property.

3. Tenant's Covenants

The Tenant covenants with the Landlord as follows:-

3.1 Rent and Payments

To pay the Rent and all other sums reserved as rent by this Lease at the times and in the manner at and in which they are reserved in this Lease.

3.2 Outgoings

3.2.1 Promptly to pay the Outgoings which are now or may during the Term be payable in respect of the Property or its owner or occupier except any payment occasioned by any disposition of or dealing with the ownership of any estate or interest expectant in reversion on the Term provided always that if any Outgoings are payable in respect of the Retained Land as well as the Property without apportionment to pay a fair and proper proportion of the same to be conclusively determined by the Landlord acting reasonably;

3.2.2 To pay for all Amenities exclusively used by or available to the Property (including all standing charges);

3.2.3 To observe and perform all present and future regulations and requirements of the authorities or companies supplying or providing the Amenities.

3.3 Repair and Upkeep

3.3.1 At all times during the Term to keep the Property (including for the avoidance of doubt all buildings structures landscaping and other erections) clean and tidy and make good:-

- (a) any damage it causes to the Property and/or
- (b) any deterioration to the condition of the Property that may arise from the Term Commencement Date

provided that the Tenant shall not be in breach of this covenant if and for so long as disrepair arises due to damage caused to the Property by any of the Insured/Covered Risks and the Tenant is diligently pursuing its insurance claim or its claim under the Risk Protection Arrangement and reinstating such damage;

3.3.2 To notify the Landlord in writing immediately if any structural damage occurs to the Property.

3.4 Access of Landlord and Notice to Repair

To permit the Landlord and all persons authorised by the Landlord (with or without equipment) upon reasonable prior notice to the Tenant (but at any time without notice in case of emergency) to enter the Property as follows:-

3.4.1 in the final 3 years of the Term in order to take inventories of any Fixtures and Fittings to be yielded up at the end of the Term;

3.4.2 at reasonable intervals during the Term in order to view and examine the state of repair and condition of the Property and to give to the Tenant or the Tenant's agent or leave on the Property notice in writing to the Tenant of all breaches of any of the tenant covenants in this Lease relating to the condition or repair of the Property ("Repair Notice") and the Tenant covenants (subject to having obtained any necessary consents to any required works, which the Tenant shall use all reasonable endeavours to obtain as soon as possible) to repair and make good the Property according to such notice and the covenants in that behalf contained in this Lease within the following time periods:-

(a) where (b) and (c) below do not apply or where the state of repair is causing a breach of health and safety or other legislation or is causing structural damage ("Safety Breach"), the works shall be commenced within the period of 56 days after the service of the Repair Notice and shall be completed diligently thereafter;

(b) where there is no Safety Breach, if the Tenant does not immediately have the funds to carry out such works but could complete the works within a reasonable period without requiring further funding under the Funding Agreement it shall demonstrate this to the Landlord by providing to the Landlord within 56 days of the service of the Repair Notice:

- (i) a statement of the maintenance budget for the Property (included within the funding already received under the Funding Agreement) and the sums expended that financial year to date on the repair and maintenance of the Property ("Funding Statement"); and
- (ii) a programme of works setting out a reasonable time period for the works to be carried out taking into account the nature of the disrepair and the funds available;

and the works shall be commenced and carried out within the periods set out in the programme of works referred to at (ii) above;

- (c) where there is no Safety Breach and where the Tenant cannot demonstrate that it can carry out the works within a reasonable time under (b) above but requires to make an application ("Funding Application") to the Secretary of State for funding under the Funding Agreement in order to carry out such works, the relevant section of works shall be commenced as soon as reasonably practicable after the Secretary of State grants permission under the programme of works agreed pursuant to the Funding Application ("Works Programme");

and if the Tenant fails satisfactorily to comply with such notice in accordance with (a) (b) or (c) above the Landlord and all persons authorised by the Landlord are entitled at any time without notice (but without prejudice to the right of re-entry contained in this Lease) to enter the Property with all necessary equipment to repair and make good the Property in accordance with the covenants and provisions contained in this Lease and the expense of such repairs together with all reasonable legal and surveyors' fees properly incurred in connection with this sub-clause must be repaid by the Tenant to the Landlord upon demand and on a full indemnity basis as a contractual debt;

- 3.4.3 where the Tenant has served notice on the Landlord pursuant to Clause 3.3.2 of the occurrence of structural damage to the Property then to permit the Landlord to enter onto the Property to view and examine the state of repair and condition of the Property;
- 3.4.4 at any time during the Term to view the Property in connection with any dealing or proposed dealing (by way of sale mortgage or otherwise) with the Landlord's reversionary interest in the Property;

- 3.4.5 (in circumstances only where the Landlord may have a liability under Law or under this Lease) to carry out such tests inspections and surveys as the Landlord reasonably requires;
- 3.4.6 at any time during the Term to fix and retain without interference upon any suitable part or parts of the Property one or more notice boards for reletting (but in the case of reletting only within six months before the Termination Date) or selling at any time the Landlord's reversionary interest in the Property;
- 3.4.7 at any time during the Term to exercise any rights reserved by this Lease and to comply with any obligations of the Landlord (whether arising under this Lease or otherwise);
- 3.4.8 at reasonable intervals during the Term in order to determine whether the Tenant has complied with all its obligations in this Lease (save that, for the avoidance of doubt, the Landlord shall not be entitled to inspect the financial records of the Tenant);

Provided that any exercise of the above rights by the Landlord does not constitute an action for forfeiture by the Landlord or evidence an intention to accept or effect the surrender of the Term and provided further that the exercise of the above rights by the Landlord shall not be in such a manner as materially to restrict or interrupt the operation of the school on the Property by the Tenant, shall cause as little damage as reasonably practicable and shall (save in relation to emergency access) be in accordance with the reasonable requirements of the Tenant in relation to the security of the Property and the health and safety of the students and others at the Property, and the Landlord shall make good any damage caused to the Property as soon as reasonably practicable.

3.5 Alterations and Additions

- 3.5.1 Not to commit any act of waste;
- 3.5.2 Not to erect any buildings or other structures on the Property nor make any structural or external alterations additions or variations to any structures for the time being on the Property without the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed) save that the Landlord can only refuse such consent if:-
 - (a) such erection alteration addition or variation will adversely affect the Landlord's statutory obligations as a landlord or as a local authority; and/or
 - (b) such erection alteration addition or variation will have an adverse effect on the structural integrity of any structures on the Property or any part or parts of any structures on the Property; and/or

- (c) such erection alteration addition or variation will adversely affect the value of the Landlord's reversionary interest in the Property;²
- 3.5.3 As part of the application to the Landlord for its consent pursuant to Clause 3.5.2 the Tenant shall:-
- (a) submit to the Landlord adequate plans and specifications describing the proposed erection alteration addition or variation and shall consult with the Landlord on the proposed erection alteration addition or variation and shall take into account any representations that the Landlord may reasonably make in relation to the matters referred to at Clause 3.5.2 (a) (b) and (c);
 - (b) make any necessary variations or alterations to the plans and specifications in accordance with the reasonable representations of the Landlord pursuant to sub-clause (a) above;
 - (c) covenant with the Landlord as to the execution and (if it is agreed between the parties before the works are carried out that they will be reinstated at the determination of the Term) the reinstatement of any of the works as the Landlord may reasonably require;
- 3.5.4 In relation to any works permitted pursuant to Clauses 3.5.2 and 3.5.3 above to carry out all such works only in accordance with such plans and specifications as have been provided to and approved by the Landlord in writing or as have been subsequently varied in accordance with any representations of the Landlord;
- 3.5.5 After commencing any works of erection alteration addition or variation as permitted pursuant to Clauses 3.5.2 and 3.5.3 above to complete such works as soon as reasonably practicable and in any event no later than by the end of the Term;
- 3.5.6 To carry out any works permitted by this Lease in a good and workmanlike manner as soon as reasonably practicable with good quality materials strictly in accordance with all relevant British Standards including codes of practice and the requirements and regulations of all utility companies affected by such works and so that any easements rights privileges or liberties which third parties enjoy in over or under the Property are not interfered with and that no nuisance is caused to the Landlord or any occupiers of any part or parts of the Retained Land.
- 3.5.7 Not to carry out any erection alteration addition or variation which hinders access to a Conduit.
-

3.6 Signs and Advertisements

3.6.1 To notify the Landlord of the affixing or display on the boundaries of the Property or on the outside of the buildings on the Property of any sign (which expression includes any signboard advertisement hoarding fascia poster placard bill notice or other notification) other than signs which:

- (a) are required by law to be affixed or displayed; or
- (b) do not require planning permission; or
- (c) are necessary or usual for the authorised use of the Property;

3.6.2 To display and maintain upon the Property notices required in relation to the Premises Acts and the Environment Acts.

3.7 Statutory Obligations

3.7.1 To comply with all Laws (including the Premises Acts) affecting the Property the physical condition or the user of them or the use of any Fixtures and Fittings in them;

3.7.2 As soon as reasonably practicable to give written notice to the Landlord of anything arising or being in the Property which may endanger or adversely affect health or safety and which might give rise to a duty of care imposed by common law or statute on the Landlord in favour of the Tenant or any other person;

3.7.3 The Tenant shall comply with its obligations, requirements and duties under the Construction (Design and Management) Regulations 2007 ("CDM Regulations") in relation to any works carried out at the Property, including all requirements in relation to the provision and maintenance of a health and safety file for the Property, which the Tenant shall maintain and shall give to the Landlord on the Termination Date;

3.7.4 The Tenant shall elect to be treated as the only client as defined under the CDM Regulations in respect of any works carried out at the Property pursuant to Regulation 8 of the CDM Regulations;

3.7.5 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations.

3.8 Yield Up

On the Termination Date quietly to yield up the Property to the Landlord with vacant possession (subject only to any lease granted to a statutory undertaker) in accordance with the proper performance of the Tenant's covenants contained in this Lease and with all refuse and (unless the Landlord notifies the Tenant to the contrary prior to the Termination Date) all Tenant's fixtures and fittings lettering and signs put up by the Tenant duly removed.

3.9 Use

- 3.9.1 Not to carry on upon the Property any noisy noxious offensive or dangerous trade or occupation provided that the proper use of the Property for the purposes permitted by clause 3.9.3 shall not be a breach of this Clause;
- 3.9.2 Not to use the Property for any illegal or immoral purpose;
- 3.9.3 Without prejudice to the preceding covenants in this Clause not to use the Property otherwise than:
 - (a) for the purposes of the provision of educational services by the Tenant (as set out in any charitable objects of and in accordance with the memorandum and articles of association of the Tenant from time to time); and
 - (b) for community, fundraising and recreational purposes which are ancillary to the use permitted under Clause 3.9.3 (a).

3.10 Planning and Environmental Matters

- 3.10.1 To provide to the Landlord copies of any plans specifications applications consents and permissions relating to applications under the Planning Acts and to deal with any queries that the Landlord acting reasonably may raise;
- 3.10.2 So often as occasion requires to obtain all consents and permissions required to authorise the use from time to time of the Property and the carrying out of any development (within the meaning of the Planning Acts) on the Property;
- 3.10.3 To pay and satisfy any charges that may hereafter be imposed under the Planning Acts in respect of the carrying out or maintenance of any such development;
- 3.10.4 To give written notice to the Landlord of the granting or refusal of any planning permission within twenty days after its receipt by the Tenant;
- 3.10.5 If the Tenant receives any compensation because of any restriction placed upon the use of the Property under or by virtue of the Planning Acts then if this Lease is determined by surrender or re-entry immediately to make such provision as is just and equitable for the Landlord to receive due benefit from such compensation.

3.11 Notices

As soon as reasonably practicable following receipt to provide to the Landlord a copy of any communication or notice which may give rise to a liability on the part of the Landlord or which may adversely affect the value or nature of the Landlord's interest in the Property.

3.12 Dealings

- 3.12.1 Not to part with or share the possession or occupation of the whole or any part or parts of the Property Provided that the Tenant may share occupation of part of the Property with a body or individual providing services or facilities which are ancillary to and within the uses referred to in clause 3.9.3 where no relationship of landlord and tenant arises as a result of such occupation;
- 3.12.2 Not to hold the Property or any part or parts of the Property or this Lease on trust for another;
- 3.12.3 Subject to sub-clause 3.12.4 not to assign or transfer any part or parts or the whole of the Property;
- 3.12.4 The Tenant is permitted to assign or transfer the whole of the Property to the Relevant Secretary of State a proprietor or proposed proprietor of an Academy or to a successor charitable or public body without the consent of the Landlord where the Secretary of State has given approval in writing to such an assignment or transfer;
- 3.12.5 Not to underlet any part or parts or the whole of the Property without the Landlord's consent, such consent not to be unreasonably withheld or delayed.
- 3.12.6 Not to charge the whole or any part or parts of the Property without the Landlord's written consent, such consent not to be unreasonably withheld or delayed.

3.13 Rights of Light and Encroachments

Not to obstruct any windows or lights belonging to the Property nor to permit any encroachment upon the Property which might be or become a detriment to the Landlord and in case any encroachment is made or attempted to be made to give immediate notice of it to the Landlord.

3.14 Indemnity

- 3.14.1 To keep the Landlord indemnified against all actions proceedings costs claims demands and expenses in respect of any liability or alleged liability in respect of any injury to or the death of any person (however the same may be caused) damage to any property moveable or immovable Laws (including the Premises Acts the Planning Acts and the Environment Acts) the infringement disturbance or destruction of any right easement or privilege and every other liability arising directly or indirectly out of any defect in or the condition or use of the Property or anything done or omitted to be done on them or any breach of the Tenant's obligations in this Lease;

3.14.2 To notify the Landlord in writing immediately upon any of the events or matters referred to in sub-clause 3.14.1 occurring or arising.

3.15 Costs

To pay to the Landlord on demand all reasonable and proper costs charges and expenses (including legal costs and surveyors' fees and other professional fees and any charges and/or commission payable to a bailiff) losses and liabilities which may be incurred by the Landlord:-

3.15.1 in connection with the preparation and service of any notice (including any schedule of dilapidations) served under this Lease relating to the repair or condition of the Property whether during the Term or within 3 months after the Termination Date;

3.15.2 in connection with any application by the Tenant for any licence approval permission or consent required under the terms of this Lease whether or not the application is withdrawn or the licence approval permission or consent is refused (save where refused unreasonably contrary to the terms of this Lease) or is granted (save where granted subject to conditions declared by a court of competent jurisdiction to be unreasonable);

3.15.3 in or in contemplation of claiming or recovering any arrears of Rent or rents or in connection with or arising out of any breach by the Tenant of any of the Tenant's obligations hereunder whether or not the Landlord proves such matters by proceedings in any Court.

3.16 VAT

3.16.1 To pay VAT upon the Rent and upon any other sums payable by the Tenant under this Lease and in relation to any other supply of goods or services (within the meaning of section 5 and schedule 4 of the Value Added Tax Act 1994) made by the Landlord to the Tenant under this Lease so far as such tax is from time to time properly chargeable upon the same and in relation to taxable supplies made by the Landlord to the Tenant the Landlord must deliver to the Tenant a VAT invoice addressed to the Tenant;

3.16.2 Where the Tenant has agreed to reimburse or indemnify the Landlord in respect of any payment made by the Landlord under the terms of or in connection with this Lease also to reimburse any VAT paid by the Landlord on such payment unless the VAT is actually recovered by the Landlord as an input in relation to supplies to the Landlord.

3.17 Interest on Arrears

If any sums from time to time payable by the Tenant to the Landlord under this Lease are not paid to the Landlord within 21 days of the date when such sums became due (whether demanded or not) or are tendered to the Landlord but the Landlord reasonably refuses to accept them so as to preserve any rights the Landlord has to pay to the Landlord (without prejudice to any other right remedy or power available to the Landlord) interest on such sums (both before and after any judgement) from the date when such sums first became due until the date of actual payment inclusive of both dates at the Interest Rate.

3.18 Landlord's Property

To observe and perform the matters contained or referred to in the documents listed in Schedule 4 relating to the Landlord's Property so far as they are still subsisting and capable of taking effect and relate to the Property and to keep the Landlord indemnified against all actions proceedings costs claims demands and expenses relating to them.

4. Landlord's Covenants

The Landlord covenants with the Tenant:-

4.1 Quiet Enjoyment

That the Tenant may peaceably and quietly hold and enjoy the Property during the Term without any interruption or disturbance by the Landlord or any person rightfully claiming through or under the Landlord.

5. Insurance and Risk Protection Arrangement

5.1 The Tenant covenants with the Landlord:-

5.1.1 to keep the Property insured with a reputable insurance office against loss or damage by the Insured/Covered Risks in the sum the Tenant is advised represents the Reinstatement Value of the Property from time to time, or to be a member of the Risk Protection Arrangement;

5.1.2 if not a member of the Risk Protection Arrangement to pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Property;

5.1.3 following the incidence of damage to or destruction of the Property and subject to receipt of all necessary consents licences permissions and the like to apply the proceeds of the policy of the insurance or payment under the Risk Protection Arrangement received for those purposes in rebuilding and reinstating the Property (provided that this covenant should be satisfied if the Tenant provides premises not necessarily identical to the Property as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable provided that in case it shall be impossible or impracticable to reinstate the Property in accordance with the provisions of this Clause 5 within 3 years of the date of damage or destruction occurring either party may

serve written notice on the other to terminate this Lease and upon service of such notice this Lease shall immediately cease and determine but without prejudice to the rights of either party against the other in respect of any prior breach of any obligation contained in this Lease and any monies received under the said policy of insurance or under the Risk Protection Arrangement whether before or after the termination of this Lease shall be paid by the Tenant on receipt to the Landlord and shall as between the Landlord and the Tenant belong to the Landlord absolutely Provided that in the event and to the extent that the Tenant erects any new structure upon the Property and finances the erection of the new structure with private funding as opposed to public monies the Tenant receives from the Secretary of State for Education pursuant to the Funding Agreement the parties shall agree to apportion such insurance monies (to the extent that they relate to the new structure on the Property) between the Landlord and the Tenant according to their respective capital investment in the Property;

5.1.4 if not a member of the Risk Protection Arrangement to produce to the Landlord a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

5.1.5 not to knowingly do anything whereby any policy of insurance relating to the Property may become void or voidable.

5.2 The Tenant further covenants with the Landlord to insure against liability in respect of property owners' and third party risks if not a member of the Risk Protection Arrangement.

6. Provisos

6.1 Re-Entry

Where there occurs a breach by the Tenant of Clause 3.9 and/or 5.1.2 of this Lease and the Landlord has served written notice specifying such breach and the remedial action required by the Tenant and if within a reasonable period (taking account of the breach complained of) the Tenant has not taken steps to remedy such breach or the Tenant is dissolved or struck off or removed from the Register of Companies or otherwise ceases to exist then it is lawful for the Landlord or any person authorised by the Landlord at any time afterwards to re-enter upon the Property or any part of it in the name of the whole and thereupon the Term absolutely determines without prejudice to any right of action of the Landlord in respect of any breach of the Tenant's obligations contained in this Lease.

6.2 Landlord's Rights on Forfeiture

The Landlord's right to forfeit this Lease is not affected by any acceptance of or demand for rent or any action which would affirm this Lease by the Landlord with knowledge of a breach of any of the Tenant's covenants contained in this Lease and the Tenant is not in any proceedings for forfeiture or otherwise entitled to rely upon any such acceptance demand or affirmation as aforesaid as a defence provided that this provision only applies to any acceptance of or demand for rent or affirmation of this Lease made during such period as may in all the circumstances be reasonable for enabling the Landlord to conduct negotiations with the Tenant for remedying the breach.

6.3 Service of Notices

Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 applies to all notices which may require to be served under the terms of this Lease except that section 196 is deemed to be amended as follows:-

- 6.3.1 the final words of section 196(4) "and that service be delivered" are deleted and there is substituted "and that service is deemed to have been made on the third working day after the registered letter has been posted" and "working day" means any day from Monday to Friday (inclusive) other than Christmas Day Good Friday and any statutory or bank holiday;
- 6.3.2 any notice or document is also sufficiently served if sent by telephonic facsimile transmission to the party to be served and that service is deemed to be made on the day of transmission if transmitted before 4.00 pm on a working day but otherwise on the next following working day;
- 6.3.3 if the party to whom any notice to be served consists of more than one person the service of notice upon one of such persons constitutes service upon all of them;
- 6.3.4 any notice to be given by a party may be given by that party's solicitor or agent and when addressed to a party is not rendered invalid by reason of that party having died become insolvent or changed name whether or not the party serving notice is aware of the fact.

6.4 Exclusion of S.62 L.P.A.

The operation of section 62 of the Law of Property Act 1925 is excluded from this Lease and the only rights granted to the Tenant are those expressly set out in this Lease and the Tenant is not by virtue of this Lease deemed to have acquired or be entitled by any means whatsoever (other than express grant) to any easement from or over the Retained Land or affecting any other land or premises now or at any time after the date of this Lease belonging to the Landlord and not comprised in this Lease.

6.5 Governance

- 6.5.1 This Lease is governed by English law.

6.5.2 The parties submit to the exclusive jurisdiction of the High Court of Justice in England.

6.6 Agreement to Exclude Sections 24 to 28 of the 1954 Act

6.6.1 The Landlord and the Tenant agree pursuant to section 38A(1) of the 1954 Act that the provisions of sections 24 to 28 (inclusive) of the 1954 Act are excluded in relation to the tenancy created by this Lease.

6.6.2 The Tenant confirms that:

(a) the Landlord served on the Tenant a notice ("the Notice") applicable to the tenancy created by this Lease on the day of 2016 in accordance with section 38A(3)(a) of the 1954 Act; and

(b) the Tenant or a person duly authorised by the Tenant made a declaration or a statutory declaration in relation to the Notice on the day of 2016 in accordance with the requirements of section 38A(3)(b) of the 1954 Act;

before the Tenant entered into this Lease or (if earlier) became contractually bound to do so.

6.7 Termination

6.7.1 This Lease shall automatically determine on the Funding Termination Date in circumstances where there is no other Funding Agreement in existence unless either:

(a) the Landlord has received prior notice in writing from the Secretary of State for Education of an intention for this Lease to be assigned in accordance with the terms of this Lease; or

(b) this Lease has been assigned in accordance with the terms of this Lease.

6.7.2 This Lease shall automatically determine on the End Date if by that date this Lease has not been assigned in accordance with the terms of this Lease.

6.7.3 The Tenant shall give written notice to the Landlord as soon as possible after becoming aware that the Funding Agreement may be liable to termination, including where a notice terminating the Funding Agreement is served on the Tenant, and the notice served on the Landlord shall specify the date (or likely date) of termination of the Funding Agreement.

6.7.4 The Tenant shall give written notice to the Landlord at the same time as the Tenant serves any notice terminating the Funding Agreement and such notice shall specify the date (or likely date) of termination of the Funding Agreement.

6.7.5 On the termination of this Lease under Clause 6.7.1 or 6.7.2 everything contained in the Lease ceases and determines but

without prejudice to any claim by either party against the other in respect of any antecedent breach of any obligation contained in the Lease.

7. Landlord's Powers

7.1 The Landlord enters into this Lease pursuant to its powers under sections 111 120 122 and 123 of the Local Government Act 1972 the Education Act 1996 Section 2 of the Local Government Act 2000 and all other powers so enabling and warrants that it has full power to enter into this Lease and to perform all obligations on its part herein contained.

7.2 Nothing in this Lease shall fetter the Landlord in the proper performance of its statutory functions.

8. New Tenancy

This Lease is a new tenancy for the purposes of the 1995 Act.

9. Contracts (Rights of Third Parties) Act

A person who is not a party to this Lease has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Lease but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

10. Charity

The Property will as a result of this Lease be held by The Two Counties Trust an exempt charity.

EXECUTED AS A DEED by the parties on the date which first appears in this Lease.

SIGNATURE PAGE

EXECUTED (but not delivered until the date hereof) AS A DEED by affixing the Common Seal of **The Derbyshire County Council** in the presence of:-

.....

.....

Position of Signatory

EXECUTED (but not delivered until the date hereof) AS A DEED by **THE TWO COUNTIES TRUST** acting by a director in the presence of:-

.....

Director

Witness signature

Witness name

Witness address

Witness occupation

SCHEDULE 1

Part 1 – The Property

ALL THAT land and buildings known as Swanwick Hall School Swanwick Alfreton Derbyshire DE55 1AE shown edged red on the Plan and including the following so far as the same may exist at any time during the Term:-

- (a) all Conduits exclusively serving such premises; and
- (b) all Fixtures and Fittings (save for those that belong to the Tenant).

Part 2 – The Retained Land

The land and premises shown edged blue on the Plan and the land comprised in Title Number DY443409 but excluding the Property.

SCHEDULE 2

Rights Granted

1. Services

The right in common with the Landlord and all others from time to time so entitled and with the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed save as provided below) for the Tenant to connect into (in so far as there are no connections) and to pass Amenities to and from the Property through Conduits now or at any time during the Term laid in under or upon the Retained Land **PROVIDED** that the Landlord has the right at any time or times during the Term:-

- 1.1 to refuse consent for the Tenant to connect into any Conduits if in the reasonable opinion of the Landlord the Conduits are insufficient to bear the extra load which would be likely to result from the proposed connection by the Tenant; and
- 1.2 to divert or vary the positions of the Conduits upon giving reasonable prior notice to the Tenant (except in case of emergency) (which interruption the Landlord must however seek to minimise so far as is reasonably possible).

2. Support

A right of support and protection to the Property from the Retained Land.

3. Access to Retained Land

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

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

SCHEDULE 3

Rights Excepted and Reserved

1. Services

The right to connect into and pass Amenities to and from the Retained Land and any other adjoining or neighbouring property of the Landlord in and through Conduits now or at any time during the Term laid in or upon the Property together with the right to enter upon the Property upon giving reasonable prior written notice to the Tenant (except in case of emergency) in order to lay inspect cleanse renew and maintain the Conduits the person exercising such right causing as little damage disturbance or inconvenience as possible to the Tenant or the business being carried on upon the Property and making good as soon as reasonably practicable any damage occasioned to the Property by the exercise of this right to the reasonable satisfaction of the Tenant.

2. Access to Property

The right upon giving reasonable prior written notice to the Tenant (except in case of emergency) to enter upon the Property for the purposes of:-

2.1 inspecting and executing repairs additions alterations and other works to or on the Retained Land or to any Conduits within the Property; and

2.2 the exercise of the rights powers privileges and permissions conferred or granted under the covenants and provisions of this Lease;

the person exercising such right causing as little damage disturbance or inconvenience as reasonably possible to the operation of the school on the Property and making good as soon as reasonably practicable to the Tenant's reasonable satisfaction any damage to the Property caused by the exercise of this right.

3. Support

A right of support and protection to the Retained Land from the Property.

SCHEDULE 4

Landlord's Property

All those matters referred to in the registers of Title Number DY443409