

THE COMPANIES ACT 2006
COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL
WRITTEN RESOLUTION¹ (TRUSTEES)
of
THE KNOLL SCHOOL EDUCATIONAL TRUST (KIDDERMINSTER) LIMITED
Company No: 00880570

WRITTEN RESOLUTION

IT IS HEREBY RESOLVED THAT any Trustee be authorised to execute and deliver
The Transfer Agreement in respect of The Knoll School between the Company and Heathfield School

AGREEMENT

The undersigned, entitled to vote on the above resolution, hereby irrevocably agree to the written resolution

Print name J. RICHARD PAINTER
Date 20.12.16
Signed J. Richard Painter

Print name JAMES RICHARD PERRIN
Date 20.12.16
Signed J. Perrin

Print name DAVID JOHN CORY
Date 20.12.16
Signed David J Cory
Print name
Date

WEDNESDAY



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A12

01/02/2017

#391

COMPANIES HOUSE

¹Resolution passed pursuant to the Company's Articles of Association and the Companies Act 2006

Signed

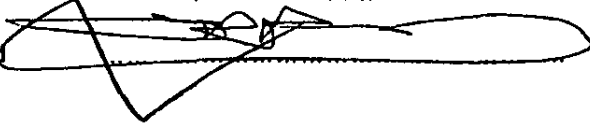
Print name

ALAN RAYMOND BULLOCK

Date

20.12.16

Signed



Print name

Date

Signed

Print name

Date

Signed

Print name

Date

Signed

Print name

Date

Signed

Print name

Date

Signed

Print name

DATED

2016

MERGER DEED

between

HEATHFIELD EDUCATIONAL TRUST

AND

THE KNOLL SCHOOL EDUCATIONAL TRUST (KIDDERMINSTER) LIMITED

Bath Office
13 Queen Square
Bath BA1 2HJ
T 01225 337599
F 01225 335437
DX 8001 Bath

Also at

London Office
Boundary House
91 Charterhouse Street
London EC1M 6HR
T 020 7796 1007
F 020 7796 1017
DX 53314 Clerkenwell

Leeds Office
1 Aire Street
Leeds LS1 4PR
T 0113 457 0161

Cambridge Office
Thirty Station Road
Cambridge CB1 2RE
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THIS DEED is dated

2016

BETWEEN

- (1) **HEATHFIELD EDUCATIONAL TRUST**, a company limited by guarantee (registered number 04595454), whose registered office is at Heathfield School, Wolverley, Kidderminster, Worcestershire, DY10 3QE, and whose registered charity number is 1098940 ("**Heathfield**"), and

THE KNOLL SCHOOL EDUCATIONAL TRUST (KIDDERMINSTER) LIMITED, a company limited by guarantee (registered number 00880570), whose registered office is at 33-34 Manor Avenue, Kidderminster, Worcester, DY11 6EA, and whose registered charity number is 527600 ("**Knoll**")

BACKGROUND

- (A) Heathfield and Knoll have agreed that it is expedient and in the best interests of their respective charities to transfer the assets and liabilities relating to Knoll to Heathfield, and that the operations of Knoll will merge with those of Heathfield
- (B) Unless otherwise agreed in writing between Heathfield and Knoll, it is intended that legal completion of the Transaction shall take place on the Legal Transfer Date
- (C) The Transaction will operate as a transfer of an undertaking to which the Regulations will apply
- (D) On the Legal Transfer Date, a single school to be called "Heathfield Knoll School" will operate from the Heathfield site provided always that the First Steps Nursery ("**Nursery**") shall continue to be provided from the Premises until the end of the Spring term in 2017
- (E) The Parties wish to enter into this Deed to give effect to the Transaction

NOW IT IS AGREED HEREBY as follows:

1 Definitions

- 1.1 In this Deed and in the Recitals, the following words and expressions have the following meanings

Assets: the property, assets and rights held, used or controlled by Knoll as referred to in clause 4.1

Assumed Liabilities all actual and contingent debts, liabilities and obligations of Knoll whether arising before or after the Legal Transfer Date which relate exclusively to the operation of the School, including, without limitation, those arising under the Contracts, in respect of any

creditors and in respect of the Employees, but not including the Excluded Liabilities

Book Debts: all trade and other debts and amounts owing to Knoll on the Legal Transfer Date in respect of goods or services supplied by Knoll in the usual or ordinary course of carrying on the School (whether or not invoiced)

Business Day: a day other than a Saturday, Sunday or a public holiday in England when banks in London are open for business

Business Information: All information, know-how and techniques (whether or not confidential and in whatever form held) which in any way (wholly or partially) relate to

- (a) all or any part of Knoll and the Assets, or
- (b) any services rendered by Knoll, or
- (c) any documentation, designs, data and manuals relating to (a) or (b), or
- (d) the operations, management, administration or financial affairs of Knoll (including any business plans or forecasts, information relating to future business development or planning and information relating to litigation or legal advice), or
- (e) the sale or marketing of any services rendered by Knoll, including all pupil names and lists, sales and marketing information (including targets, sales and market share statistics, market surveys and reports on research)

Business Name: The Knoll School

Charge: the fixed charge to be entered into between Knoll and HSBC Bank plc to secure the Loan against the Premises,

Completion: the completion of the transfer of the Assets at the Time of Transfer in accordance with this Deed

Conditions.	the conditions set out in Schedule 2
Confidential Information:	all information in whatever form (including, without limitation, in written, oral, visual or electronic form, or on tape or disk) relating to Heathfield or Knoll (as appropriate) that is confidential in its nature and is directly or indirectly disclosed to Knoll or Heathfield (as the case may be) or any of their representatives or the governors by any agent or employee of Knoll or Heathfield (as the case may be) or which comes to Heathfield's or Knoll's attention prior to the date of this Deed in connection with the Transaction which is not contained in Knoll's or Heathfield's statutory accounts (as the case may be) filed at the Charity Commission and Companies House or contained on Knoll's or Heathfield's (as the case may be) websites
Contracts.	all the contracts and engagements of Knoll, or orders made by Knoll, in relation to the School (including the contracts for the use of the Leased Assets and all contracts with pupils and/or their parents or guardians) whether performed or to be performed at the Legal Transfer Date and which have been disclosed by Knoll to Heathfield before the date of this Deed, save for the Employees' Contracts, including but without limitation those detailed at Schedule 5
DPA 1998	Data Protection Act 1998,
Employees.	all employees of Knoll, as listed in Schedule 1
Employees' Contracts:	all contracts with the Employees whether performed or to be performed at the Legal Transfer Date
Excluded Assets	all cash balances of Knoll held in hand or in any account,
Excluded Liabilities	the following liabilities <ul style="list-style-type: none"> (a) any liability of a Knoll trustee or governor arising as a result of his or her act or omission which he or she (i) knew to be a breach of trust or breach of duty or (ii) recklessly disregarded

	<p>whether such act or omission was a breach of duty or not or (iii) arising as a result of his or her fraud,</p> <p>(b) any other liability that Knoll is entitled to recover under a policy of insurance having taken reasonable steps to enforce such recovery,</p> <p>(c) the Loan and the Charge</p>
Fee Remission	the scholarships, bursaries and all other discounts or remissions from fees in respect of Pupils as are contractually binding on Knoll as at the Legal Transfer Date and which are set out in Schedule 4,
Leased Assets	those assets which are leased by Knoll, including but without limitation those detailed at Schedule 6,
Legal Transfer Date	2 January 2017 or such other date as agreed in writing between Knoll and Heathfield following the Conditions being satisfied or waived,
Loan:	the loan to be entered into between Knoll and HSBC Bank Plc in the sum of £100,000 on the terms as detailed in Annex 1,
Nursery Availability Date:	1 April 2017 or, if later, the date upon which alterations to the Heathfield Site will have completed to enable operation of the Nursery from the Heathfield Site or such other date agreed between the parties acting reasonably,
Premises	Knoll School, 33-34 Manor Avenue, Kidderminster, Worcestershire, DY11 6EA, being the unregistered property known as The Knoll School,
Pupils	the pupils registered to attend the School as at the Legal Transfer Date,
Records	the books, accounts, lists of parents, pupils and suppliers and all the other documents, papers and records relating to the School or any of the Assets,
Regulations:	the Transfer of Undertakings (Protection of

Employment) Regulations 2006 (as amended),

School:	the independent school known as The Knoll School, comprising a co-educational day school and nursery at the Premises for pupils aged 3 months to 11,
Time of Transfer:	00 01 on the Legal Transfer Date
Transaction.	the transaction contemplated by this Deed or any part of that transaction,
Warranties:	the Warranties and representations made by Knoll in clause 10

2 Interpretation

- 2 1 Clause, Schedule and paragraph headings shall not affect the interpretation of this Deed
- 2 2 References to clauses and Schedules are to the clauses of and Schedules to this Deed and references to paragraphs are to paragraphs of the relevant Schedule
- 2 3 The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed Any reference to this Deed includes the Schedules
- 2 4 A reference to **this Deed** or to any **other agreement or document referred to in this Deed** is a reference to this Deed or such other agreement or document as varied or novated in accordance with its terms from time to time
- 2 5 Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular
- 2 6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 2 7 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns
- 2 8 A reference to a **party** shall include that party's personal representatives, successors and permitted assigns
- 2 9 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established
- 2 10 A reference to **writing** or **written** includes fax and email
- 2 11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms

- 2 12 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them
- 2 13 References to a document in **agreed form** are to that document in the form agreed by the relevant parties and initialled by them or on their behalf for identification
- 2 14 Unless otherwise provided, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
- 2 15 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision
- 2 16 Any obligation on a party not to do something includes an obligation not to allow that thing to be done

3 Conditions

- 3 1 Completion is subject to the Conditions being satisfied or waived in accordance with clauses 3 5 and 3 6
- 3 2 If any of the Conditions are not satisfied or waived by the Legal Transfer Date, this Deed shall cease to have effect immediately after that date and time except for
- 3 2 1 the provisions set out in clause 3 3, and
- 3 2 2 any rights or liabilities that have accrued under this Deed
- 3 3 The following provisions shall continue to have effect in any event whether or not the Conditions fail, are waived or are satisfied
- 3 3 1 clause 1 (Definitions),
- 3 3 2 clause 2 (Interpretation)
- 3 3 3 clause 3 2 and clause 3 3 (Conditions),
- 3 3 4 clause 17 (Confidentiality and announcements),
- 3 3 5 clause 19 (Notices),
- 3 3 6 clause 20 (General), and
- 3 3 7 clause 21 (Costs)
- 3 4 The parties shall use all reasonable endeavours (so far as lies within their respective powers) to procure that their respective Conditions, which they are required to fulfil pursuant to this Deed, are satisfied by the Legal Transfer Date
- 3 5 The parties shall further co-operate fully in all actions necessary to procure the satisfaction of the Conditions including, but not limited to, the provision by all parties of all information reasonably necessary to make any notification or filing or as requested by any relevant authority, keeping all parties informed of the progress of any notification or filing and providing such assistance as may reasonably be required

3 6 Heathfield may, to the extent it is legally entitled to do, waive any of the Conditions by written notice to Knoll

4 Transfer

4 1 In consideration of Heathfield assuming responsibility for the Assumed Liabilities and giving the indemnity in clause 5 1, and subject to the Conditions having been fulfilled or waived in accordance with clause 3, Knoll shall transfer with full title guarantee and Heathfield shall acquire as at and with effect from the Time of Transfer

4 1 1 the School as a going concern, and

4 1 2 all property (excluding the Premises), assets, funds and other monies, rights and options owned and/or used by or under the control of Knoll as at the Legal Transfer Date including but without limitation

- (a) the goodwill of the School together with the right for Heathfield to represent itself as carrying on the School in succession to Knoll,
 - (b) all the computers and other equipment, chattels, furniture, fixtures and fittings, machinery, tools, office equipment and sundries,
 - (c) the Records,
 - (d) all the stocks and materials used by Knoll,
 - (e) all Book Debts and other debts, prepayments and other sums due or payable and belonging to Knoll and all rights and the benefit of all securities and all guarantees in connection with such sums,
 - (f) the Business Information,
 - (g) the benefit (subject always to the burden) of the Contracts so far as Knoll can assign the same and subject where necessary to the provisions of clause 16,
 - (h) the benefit of all copyrights, domain names, trademarks and all other intellectual property rights,
 - (i) all investments and securities,
 - (j) all rights and claims of Knoll against third parties (including without limitation all rights in connection with insurance policies held by Knoll subject to the consent of the relevant insurance companies) so far as Knoll can assign the same,
 - (k) the Employees' Contracts, subject to the provisions of clause 12,
 - (l) all other (if any) assets and rights owned and/or used by or under the control of Knoll as at the Legal Transfer Date and not specified above,
- to be held by Heathfield as part of its unrestricted assets (subject to the terms of this Deed)

4 2 The transfer under clause 4 1 is subject in all cases to all existing charges or other encumbrances of any kind (if any) affecting the Assets or any of them with the exception of the Charge and the Loan

4 3 The Excluded Assets and Excluded Liabilities shall be excluded from the Transaction

4 4 The balance of any monies held by Knoll after the Sale shall be paid to Heathfield as further detailed at clause 7 6

5 Heathfield's undertakings and indemnities

5 1 With effect from the Legal Transfer Date Heathfield

5 1 1 shall assume responsibility for the Assumed Liabilities, and

5 1 2 undertakes promptly to pay, satisfy and discharge the Assumed Liabilities and to fully and effectually indemnify and keep indemnified on demand Knoll against such debts, liabilities and obligations in connection with the Assumed Liabilities,

provided always such debts, liabilities and obligations are not in any way caused by or related to (directly or indirectly) any breach of any Warranty made by Knoll

5 2 Heathfield shall pay the reasonable expenses (reasonably incurred) by Knoll in preparing final accounts and organising for Knoll to be wound up and removed from the register at Companies House and the Charity Commission For the avoidance of doubt, Knoll shall not be wound up until it has complied with all of its obligations under this Deed Knoll shall keep Heathfield fully informed of the steps taken to wind up Knoll

6 Operation of School

6 1 With effect from the Legal Transfer Date, and subject to clause 6 2, Heathfield shall operate the merged school from the Heathfield Site under the name "Heathfield Knoll School"

6 2 The Nursery shall operate from the Premises until the Nursery Availability Date

6 3 With effect from the Legal Transfer Date, three current trustees of Knoll shall be appointed as trustees of Heathfield

7 Premises

7 1 Knoll shall retain the legal title to the Premises and shall, following the Legal Transfer Date, permit Heathfield to occupy the Premises as licensee for the purposes of the operation of the Nursery until the Nursery Availability Date provided that Heathfield shall fully vacate the Premises within 10 Business Days of the Nursery Availability Date ("**Licence**")

7 2 No fee shall be payable by Heathfield for the Licence, but Heathfield shall make a fair and reasonable contribution (such contribution to be agreed between the parties acting reasonably) towards the running costs of the Premises during the term of the Licence

- 7 3 Knoll shall make arrangements for the disposal of the Premises, subject to the requirements of the Charities Act 2011 ("**Sale**") Knoll agrees that it shall use all reasonable endeavours to complete the Sale as soon as practicable after the Nursery Availability Date
- 7 4 Knoll shall keep Heathfield fully informed with regard to the conduct of negotiations with regard to the Sale
- 7 5 Knoll shall seek Heathfield's prior written consent before accepting any offer in respect of the Premises and before entering into an agreement for the Sale
- 7 6 The net proceeds of Sale shall be first applied to meet the Loan and, subject thereto, shall be paid to Heathfield within 5 Business Days of completion of the Sale for its general charitable purposes

8 Ongoing obligations

- 8 1 Between the date of this Deed and the Legal Transfer Date, Knoll undertakes to Heathfield
- 8 1 1 to operate the School in the manner in which it has been operated prior to the date of this Deed (except as otherwise agreed in writing by Heathfield),
- 8 1 2 to take all steps necessary to preserve the assets of Knoll and, in particular, to maintain in force all insurances normally kept in force and to note Heathfield's interest in the Assets, the School and the Premises on all policies of insurance,
- 8 1 3 to encourage pupils of the School and parents of those pupils to remain at the School following Completion,
- 8 1 4 to provide Heathfield as soon as practicable with such written information, documents and schedules as Heathfield may reasonably require in relation to the anticipated pupil roll as at 2 January 2017,
- 8 1 5 to allow Heathfield access at reasonable times and on prior notice to all books and records and to take copies thereof,
- 8 1 6 to inform Heathfield promptly of any matter likely to materially affect the reputation or finances of Knoll or otherwise materially impact on the matters contemplated in this Deed,
- 8 1 7 to manage and maintain the Premises in so far as necessary for health and safety purposes and otherwise in accordance with its existing management policies,
- 8 2 Between the date of this Deed and the Legal Transfer Date, Knoll shall not without the consent in writing of Heathfield
- 8 2 1 incur any capital expenditure in excess of £5,000 without the prior consent of Heathfield,
- 8 2 2 dispose or agree to dispose of or grant any option in respect of any part(s) of the Assets,

- 8 2 3 borrow any money or otherwise amend the terms of any existing facilities, with the exception of the Loan,
 - 8 2 4 enter into or vary the terms of any material contract or legally binding commitment,
 - 8 2 5 dismiss or appoint any employee or amend the terms of employment of any of its employees,
 - 8 2 6 make any representation to Employees (except as required by the Regulations and in those circumstances always in accordance with the wording of communication agreed by Heathfield), parents or any third party in relation to the matters contemplated in this Deed,
 - 8 2 7 enter into any arrangements in respect of the Premises
- 8 3 Between the Legal Transfer Date and the completion of the Sale, Knoll shall manage and maintain the Premises in so far as necessary for health and safety purposes and otherwise in accordance with such site management policies as may be required by Heathfield from time to time
- 8 4 Between the Legal Transfer Date and the completion of the Sale, Knoll shall not without the consent in writing of Heathfield
- 8 4 1 incur any capital expenditure in excess of £5,000 without the prior consent of Heathfield,
 - 8 4 2 dispose or agree to dispose of or grant any option in respect of any part(s) of the Premises,
 - 8 4 3 borrow any money or otherwise amend the terms of any existing facilities, with the exception of the Loan,
 - 8 4 4 enter into any arrangements in respect of the Premises, unless otherwise authorised by clause 8
- 8 5 Knoll agrees that it will take all necessary steps to effect its obligations in relation to the duty to inform and consult under the Regulations between the date of this Deed and the Legal Transfer Date
- 9 Warranties**
- 9 1 The parties acknowledge that each party has entered into this Deed on the basis of, and in reliance on, the following warranties ("**Warranties**")
- 9 1 1 Each party has disclosed all information of which it is aware or should reasonably be aware that should reasonably be disclosed to the other party (and/or its professional advisers) in relation to the other party's entry into the Transaction and that information is to the best of the knowledge and belief of the party providing the information (having made all reasonable enquires) true, accurate and not misleading

- 9 1 2 Each party has all requisite power and authority, and has taken all necessary corporate action, to enable them to enter into and perform this Deed and all agreements and documents entered into or executed, or required to be entered into or executed, pursuant to the terms of this Deed
- 9 1 3 This Deed and any other document required to be entered into or executed pursuant to the terms of this Deed will, when executed by each party, constitute binding obligations of each party enforceable in accordance with their respective terms
- 9 2 Each party warrants, represents and undertakes to the other party that each of the Warranties contained in clause 9 1 is true, accurate and not misleading at the date of this Deed and undertakes to the other party that each such Warranty will continue to be correct and not misleading throughout the period from the date of this Deed to the Legal Transfer Date
- 9 3 Each of the Warranties is separate and independent and, unless expressly provided to the contrary, is not limited by reference to any other Warranty or anything in this Deed
- 10 Completion and further assurance**
- 10 1 Subject to the Conditions being satisfied or waived, Completion shall take place on the Legal Transfer Date at such place or such other time as soon as practicable thereafter as the parties shall agree in writing, whereupon each party shall deliver to the other the items set out in Schedule 3
- 10 2 If either party does not comply with clause 10 1 or if any of the Warranties are breached or prove to be untrue or misleading in any material respect the non-defaulting party may, without prejudice to any other rights or remedies it has
- 10 2 1 so far as is practicable, proceed to Completion, or
- 10 2 2 defer Completion to a date no more than 28 days after the date on which Completion would otherwise have taken place
- 10 3 Upon and after Completion, Knoll shall, as and when required by Heathfield, execute, sign and date at the expense of Heathfield all such deeds, documents, assurances, acts and things as shall be reasonably required by Heathfield for vesting in it the whole undertaking of the School and the Assets agreed to be transferred and for giving to Heathfield the full benefit of this Deed provided that as from the Legal Transfer Date and until such time as each or all of the Assets shall be finally vested in Heathfield
- 10 3 1 Knoll shall hold the same in trust for the benefit of Heathfield, and
- 10 3 2 as required by Heathfield, Knoll will execute declarations of trust in favour of Heathfield or otherwise in respect of the Assets in such form as Heathfield may reasonably require
- 11 Book debts**
- 11 1 As and when required by Heathfield after Completion, Knoll shall deliver to Heathfield (at Heathfield's cost) assignment of each of the Book Debts and Knoll shall irrevocably appoint

any director of Heathfield after Completion to act as attorney in the execution of such assignment, such power of attorney being by way of security to secure Knoll's obligations under this Deed in connection with the Book Debts

11 2 Notwithstanding clause 11 1, Knoll undertakes to hold on trust for the benefit of Heathfield any payments in respect of any Book Debts received by it and to remit the same to Heathfield forthwith on receipt

11 3 At the request of Heathfield (and at Heathfield's expense), Knoll shall sign and deliver to Heathfield any letter to each of the persons from whom the Book Debts are owed requiring them to pay their respective part of the Book Debts to Heathfield

12 Employees

12 1 Knoll and Heathfield acknowledge and agree that the transfer of the Assets under this Deed constitutes a relevant transfer of the whole of the undertaking of the School for the purpose of the Regulations and accordingly the Employees' Contracts shall transfer to Heathfield as at the Legal Transfer Date (subject to the right of any of the Employees to object to the transfer of their employment pursuant to the Regulations) and all and any liabilities including but not limited to remuneration, benefits (including retention bonuses) and any claims, demands, losses, awards (including statutory redundancy payments) and otherwise of the Employees in respect of the period up to the Legal Transfer Date and thereafter shall be discharged by Heathfield

12 2 Both parties agree and acknowledge that they have a duty to inform (and if relevant measures are envisaged by either party to consult) under regulation 13 of the Regulations and that they will co-operate with one another in fulfilling their respective responsibilities

12 3 Knoll agrees to discharge all emoluments and outgoings payable to or in relation to the Employees before the Legal Transfer Date (including without limitation all wages, bonuses, commissions, allowances, PAYE, National Insurance contributions, pension contributions and otherwise)

12 4 Knoll confirms that it has complied with, and shall up to and including the Legal Transfer Date comply with all of its obligations due to or in connection with the Employees

12 5 Knoll confirms that it shall comply with its obligations under regulations 11 and 13 of the Regulations

12 6 Knoll confirms that it has not in the last 12 months altered and shall not alter (whether to take effect before, on or after the Legal Transfer Date) any of the terms of employment or engagement of any of the Employees (without the prior written consent of Heathfield) save in respect of annual pay awards to all Employees disclosed to Heathfield (and/or its professional advisers),

12 7 Knoll confirms that it has not terminated and shall not terminate or take any intentional steps to terminate (constructively or otherwise) the employment of any of the Employees (without the prior written consent of Heathfield, not to be unreasonably withheld),

- 12 8 Knoll confirms that it will not employ, engage or assign any person (whether to commence before, on or after the Legal Transfer Date) who is not an Employee to work in the School without the prior written consent of Heathfield not to be unreasonably withheld,
- 12 9 Heathfield undertakes to be responsible for and to fully and effectually indemnify and keep indemnified Knoll in respect of
- 12 9 1 all emoluments and outgoings payable to or in relation to the Employees (including without limitation all wages, bonuses, commissions, allowances, PAYE, National Insurance contributions, pension contributions and otherwise) on and from the Legal Transfer Date,
- 12 9 2 all and any claims or demands made on or after the Legal Transfer Date by or on behalf of the Employees or any of them arising out of or in connection with their employment or the termination of their employment at any time,
- 12 9 3 any failure by Heathfield to comply with its obligations under Regulation 13 of the Regulations and any consequent award of compensation under Regulation 15 of the Regulations, and
- 12 9 4 any breach by Heathfield of any of the warranties given or obligations entered into by it within this clause 13
- 12 10 Heathfield shall assume the outstanding obligations of Knoll in respect of any accrued holiday entitlements of the Employees on the Legal Transfer Date

13 Data Protection

- 13 1 Heathfield undertakes that, on receipt of the Business Information and, in particular (but without limitation), any Business Information relating to the Employees, Pupils (or their families) and the Contracts or any parties to them
- 13 1 1 it shall duly observe all its obligations as a Data Controller under the DPA 1998 which arise in connection with processing the Business Information,
- 13 1 2 it shall comply with the eight Data Protection Principles set out in the DPA 1998 and, in particular, it shall process the Business Information fairly and lawfully in accordance with the First Data Protection Principle for the purpose of the continued provision of education to the Pupils and in connection with the employment of the Employees and in accordance with the terms and conditions set out in this agreement,
- 13 1 3 it shall send a fair processing notice to each Pupil (or his or her family) and Employee identified in the Business Information within 10 Business Days of the Legal Transfer Date,
- 13 1 4 it shall respond to any request made by an Employee or a Pupil (or his or her family) in relation to the provision of education to the Pupils in accordance with the rights of data subjects (as defined in the DPA 1998), and

13 1 5 it shall obtain, and at all times maintain, a notification under the DPA 1998 appropriate to the performance of its obligations under this agreement

13 2 To the extent that any Employee brings any claim against Heathfield, Knoll shall provide such assistance as shall reasonably be required in connection with the defence of such claim including provision of information in the possession of Knoll and access to any witnesses (to the extent that any such assistance is permitted in accordance with the DPA 1998)

14 Pensions

14 1 Heathfield shall with effect from the Legal Transfer Date automatically enrol all eligible teaching Employees in to the Teachers' Pension Scheme on such contribution rates as are determined by the Teachers' Pension Scheme from time to time

14 2 Heathfield shall with effect from the Legal Transfer Date automatically enrol all eligible non-teaching Employees into Heathfield's auto-enrolment pension scheme

15 Insurance and risk

15 1 Knoll shall operate the School for its own benefit and at its own risk up to Completion

15 2 The Assets and Premises shall be at the risk of Heathfield from Completion

15 3 Heathfield shall, subject to the consent of the insurance companies involved, be entitled to the benefit of the current insurances Knoll has in respect of the Assets hereby agreed to be transferred, the Employees and otherwise in respect of Knoll

16 Contracts

16 1 With effect from the Legal Transfer Date and subject to clause 16 2, the parties have agreed to novate Knoll's rights, obligations and liabilities under the Contracts to Heathfield and Heathfield shall therefore

16 1 1 take over from Knoll the benefit and burden of any Contracts with effect from Completion,

16 1 2 carry out, perform, discharge and complete all the obligations and liabilities created by or arising under any Contracts,

16 1 3 assume full responsibility for all actions, proceedings, costs, damages, expenses (including legal expenses), claims and demands brought or made against Knoll in respect of all Contracts without recourse to Knoll, and

16 1 4 fully and effectually indemnify and keep indemnified on demand Knoll against any and all debt, liabilities and obligations and all actions, proceedings, costs, damages, expenses (including any legal expenses), claims and demands in connection with any of the Contracts

16 2 Nothing in this Deed shall operate or be deemed to operate as an assignment of Contracts as would give rise to any termination or forfeiture of any benefit, right or interest of Knoll, whether

as carried on by Knoll prior to the Legal Transfer Date or Heathfield after the Legal Transfer Date

- 16 3 Insofar as the benefit or burden of the Contracts cannot effectively be assigned to Heathfield except by an agreement or novation with, or consent to the assignment from, the third party concerned

16 3 1 Heathfield and Knoll shall do all they reasonably can to procure such novation or assignment, and

16 3 2 unless and until the Contracts shall be novated or assigned Knoll shall hold the same in trust for Heathfield, and Heathfield shall, as Knoll's sub-contractor, perform all the obligations of Knoll, unless sub-contracting is not permissible or lawful under the continuing contract

- 16 4 If the third party concerned refuses consent to assignment or novation of a Contract, or that third party's consent is not obtained within one year of the Legal Transfer Date, Knoll shall be entitled, with the consent of Heathfield, to serve proper notice to terminate that Contract. Knoll shall indemnify Heathfield against all debt, liabilities and obligations and all actions, proceedings, costs, damages, expenses (including any legal expenses), claims and demands suffered or incurred by Heathfield arising out of or in connection with the termination of such Contract

17 Confidentiality and announcements

- 17 1 The parties undertake to each other that up to and following Completion they shall keep confidential and use all reasonable endeavours to procure that their respective governors, officers, employees and agents keep confidential the Confidential Information and use the Confidential Information only for the purposes contemplated by this Deed

- 17 2 Both parties will work together to agree a communications plan to inform key stakeholders, including pupils, parents, staff and the community of the merger plans following signature of this Deed. Both parties will use reasonable endeavours to secure public support of the leaderships and governance of both schools

- 17 3 The parties shall not make any announcement or promulgate any circular or other publicity in connection with the subject matter of this Deed (other than as permitted by this Deed) without the prior consent of both parties, such consent not to be unreasonably withheld or delayed

18 VAT

- 18 1 Knoll and Heathfield intend (if relevant) that the Value Added Tax Act 1994 Section 49 (Section 49) and the Value Added Tax (Special Provisions) Order 1995 Article 5 as amended (Article 5) shall apply to the Transaction and each shall use reasonable endeavours to secure that pursuant to Section 49 and Article 5, the transfer pursuant to this Deed is treated as neither a supply of goods nor a supply of services for the purposes of value added tax but as the transfer of a business as a going concern

- 18 2 Knoll warrants that it has not elected any of the properties on the Premises for VAT and will not do so
- 18 3 If nevertheless, VAT is payable in relation to the Transaction and HM Revenue and Customs (HMRC) have so confirmed in writing after full disclosure of any and all material facts by Knoll and Heathfield to HMRC, Knoll shall promptly deliver to Heathfield a proper VAT invoice in respect of the VAT chargeable. On receipt by Heathfield of that proper VAT invoice the VAT payable shall be paid by Heathfield
- 18 4 Before sending any letter and or disclosure materials to HMRC in relation to VAT Knoll will give Heathfield reasonable opportunity to comment on such letter and or disclosure materials and shall make such amendments as Heathfield reasonably requires

19 Notices

- 19 1 A notice given to a party under or in connection with this Deed

19 1 1 shall be in writing and in English,

19 1 2 shall be sent to the relevant party for the attention of the contact and to the address or fax number specified in clause 19 2, or such other address, fax number or person as that party may notify to the others in accordance with the provisions of this clause 19,

19 1 3 shall be

- (a) delivered by hand, or
- (b) sent by fax, or
- (c) sent by pre-paid first class post, recorded delivery or special delivery, or
- (d) sent by airmail or by reputable international overnight courier (if the notice is to be served by post to an address outside the country from which it is sent), and

19 1 4 is deemed received as set out in clause 19 4

- 19 2 The addresses and fax numbers for service of notices on the parties are

19 2 1 Knoll

- (a) address Knoll School, 33 Manor Avenue, Kidderminster, Worcestershire, DY11 6EA
- (b) for the attention of Alan Bullock

19 2 2 Heathfield

- (a) address Wolverley, Kidderminster, Worcestershire, DY10 3QE
- (b) for the attention of Douglas Jackson

- 19 3 A party may change its details for service of notices as specified in clause 19 2 by giving notice to each of the other parties, provided that the address for service is an address in the UK following any change Any change notified pursuant to this clause shall take effect at 9 00 am on the later of
- 19 3 1 the date (if any) specified in the notice as the effective date for the change, or
- 19 3 2 five Business Days after deemed receipt of the notice of change
- 19 4 Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause have been satisfied)
- 19 4 1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address, or
- 19 4 2 if sent by fax, at the time of transmission, or
- 19 4 3 if sent by pre-paid first class post, recorded delivery or special delivery to an address in the UK, at 9 00 am on the second Business Day after posting, or
- 19 4 4 if sent by pre-paid airmail to an address outside the country from which it is sent, at 9 00 am on the fifth Business Day after posting, or
- 19 4 5 if sent by reputable international overnight courier to an address outside the country from which it is sent, on signature of a delivery receipt or at the time the notice is left at the address, or
- 19 4 6 if deemed receipt under the previous paragraphs of this clause 19 4 would occur outside business hours (meaning 9 00 am to 5 30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), at 9 00 am on the day when business next starts in the place of deemed receipt For the purposes of this clause, all references to time are to local time in the place of deemed receipt
- 19 5 To prove service, it is sufficient to prove that
- 19 5 1 if delivered by hand or by reputable international overnight courier, the notice was delivered to the correct address, or
- 19 5 2 if sent by fax, a transmission report was received confirming that the notice was successfully transmitted to the correct fax number, or
- 19 5 3 if sent by post or by airmail, the envelope containing the notice was properly addressed, paid for and posted
- 19 6 This clause 19 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
- 19 7 A notice given under or in connection with this Deed is not valid if sent by email
- 20 General**
- 20 1 This Deed shall be binding upon and enure for the benefit of the successors of the parties but shall not be assignable

- 20 2 This Deed and the documents referred to in it are made for the benefit of the parties and their successors and permitted assigns and are not intended to benefit, or be enforceable by, anyone else In particular, the Contracts (Rights of Third Parties) Act 1999 shall not apply in relation to this Deed
- 20 3 This Deed shall remain in force and effect after the Legal Transfer Date in respect of any matters, covenants or conditions which shall not have been done, observed or performed prior to the Legal Transfer Date, and all obligations of the parties shall (except for any obligations fully performed at the Legal Transfer Date) continue in full force and effect
- 20 4 This Deed, together with the documents referred to in it, contains the entire agreement between the parties relating to the Transaction and supersedes all prior drafts, previous agreements, arrangements and understandings, whether in writing or oral, between the parties relating to these specific transactions, except to the extent that they are repeated in this Deed
- 20 5 This Deed may be signed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has signed at least one counterpart Each counterpart shall constitute an original of this Deed but all counterparts shall together constitute one and the same deed
- 20 6 Each of the parties confirm that they are entering into this Deed on their own behalf and have obtained all their respective corporate authorisations to empower them to enter into and perform their obligations under this Deed
- 20 7 This Deed and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the laws of England
- 20 8 The parties irrevocably agree that the Courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed
- 21 Costs**
- 21 1 Except as expressly provided in this Deed, all costs in connection with the negotiation, preparation, execution and performance of this Deed and in connection with investigating the affairs of the other party shall be borne by the party that incurred the costs

EXECUTED as a Deed by the parties and delivered on the date stated at the beginning

Executed as a deed by the HEATHFIELD
EDUCATIONAL TRUST acting by a director in
the presence of



Director

NAME SUSAN SCOTT

ADDRESS 38 PARK LANE

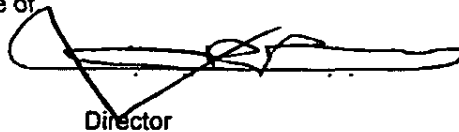
DOUGLAS JACKSON
Print name

BADDLEY WORCESTERSHIRE

DY12 2EW

OCCUPATION ACCOUNTANT

Executed as a deed by THE KNOLL SCHOOL
EDUCATIONAL TRUST (KIDDERMINSTER)
LIMITED acting by a director in the presence of



Director

NAME JULIE ANTONIS

ADDRESS 91 FRENCH ROAD

ALAN RAYMOND BULLER
Print name

KIDDERMINSTER WYCS

DY11 5BJ

OCCUPATION OFFICE MANAGER

Executed as a deed by the **HEATHFIELD
EDUCATIONAL TRUST** acting by a director in
the presence of

Director

NAME

ADDRESS

Print name

OCCUPATION

Executed as a deed by **THE KNOLL SCHOOL
EDUCATIONAL TRUST (KIDDERMINSTER)
LIMITED** acting by a director in the presence of

Director

NAME

ADDRESS

Print name

OCCUPATION

Schedule 2 Conditions

- (1) Consultation with the Employees in accordance with the Regulations
- (2) Completion of legal and financial due diligence to the satisfaction of Heathfield and Knoll
- (3) DfE consent is obtained to the material change(s) to Heathfield

Schedule 3 Completion Deliverables

- 1 At Completion Knoll shall deliver, or procure delivery, to Heathfield of or make available to Heathfield
 - 1 1 physical possession of all the Assets capable of passing by delivery, with the intent that title in such Assets shall pass to Heathfield by and on such delivery,
 - 1 2 all invoices, policies, certificates, receipts, maintenance contracts, health and safety files and other documents relating to the Premises,
 - 1 3 if requested by Heathfield, duly executed agreements in the agreed form for the assignment or novation of the benefit of the Contracts to Heathfield, or as Heathfield directs, and all requisite notices, consents and licences therefor,
 - 1 4 duly executed assignments in the agreed form to vest the Goodwill and the Business Name in Heathfield or as Heathfield directs,
 - 1 5 all documents of title and certificates for the lawful operation and use of, and all service documents pertaining to, the Assets,
 - 1 6 the Contracts,
 - 1 7 the Records, and
 - 1 8 a certified copy of the resolution, in agreed form, adopted by the directors of Knoll authorising the Transaction and entry into this Deed
- 2 At Completion Heathfield shall deliver, or procure delivery, to Knoll of or make available to Knoll
 - 2 1 a certified copy of the resolution adopted by Heathfield authorising the Transaction, entry into this Deed,
 - 2 2 a certified copy of the resolution of the members of Heathfield authorising the change to its name and to amend its objects

Schedule 4 Fee Remission

Staff Discounts 2015-16

Staff Discounts 2016-17

Bursaries 2015-16

Bursaries agreed for 2016-17

Scholarships 2015-16

Scholarships agreed for 2016-17

Details of any Knoll parents who have an advance fee payment scheme