

DATED 27<sup>th</sup> November 2019

**THE SECRETARY OF STATE FOR EDUCATION** (1)

AND

**ORMISTON ACADEMIES TRUST** (2)

AND

**SANDYMOOR FREE SCHOOL** (3)

---

**DEED OF NOVATION AND VARIATION**

relating to the funding agreement for Sandymoor Free School

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THIS DEED is made the 27<sup>th</sup> day of November 2019

The parties to this Deed are:

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "**Secretary of State**");
- (2) **ORMISTON ACADEMIES TRUST**, a charitable company incorporated in England and Wales with registered company number 06982127 whose registered address is at Ormiston House, Newhall Street, Birmingham, England, B3 1RY (the "**Incoming Party**"); and
- (3) **SANDYMOOR FREE SCHOOL**, a charitable company incorporated in England and Wales with registered company number 07635438 whose registered address is at Sandymoor School, Wharford Lane, Sandymoor, Runcorn, Cheshire, WA7 1QU (the "**Outgoing Party**"),

together referred to as the "**Parties**".

## INTRODUCTION

- A. Sandymoor Free School is a mainstream free school and an academy within the meaning of the Academies Act 2010 (the "**Academy**"), and is currently operated by the Outgoing Party.
- B. The Secretary of State and the Outgoing Party entered into a funding agreement for the Academy on 9 August 2012 which was subsequently amended by deeds of variation entered into on 19 September 2013 and 26 October 2018 (the "**Funding Agreement**") (copies of which are contained in Schedule 1).
- C. It is proposed that, with effect from 00.01 am on 1 December 2019 (the "**Transfer Date**") the Incoming Party will assume responsibility for the management and operation of the Academy (to be renamed "Sandymoor Ormiston Academy") in succession to the Outgoing Party.
- D. The Parties wish to novate the Funding Agreement to the Incoming Party and the Secretary of State and the Incoming Party wish to vary the terms of the Funding Agreement subject to the provisions of this Deed.

## LEGAL AGREEMENT

1. Unless defined otherwise in this Deed, any word or phrase used in this Deed shall, if that word or phrase is defined in the Funding Agreement, bear the meaning given to it in the Funding Agreement.

## **NOVATION**

2. With effect from the Transfer Date:
  - a. the Outgoing Party transfers all its rights and obligations under the Funding Agreement to the Incoming Party;
  - b. the Incoming Party shall enjoy all the rights and benefits of the Outgoing Party under the Funding Agreement and all references to the Outgoing Party in the Funding Agreement shall be read and construed as references to the Incoming Party;
  - c. the Incoming Party agrees to perform the Funding Agreement and be bound by its terms in every way as if it were the original party to it in place of the Outgoing Party; and
  - d. the Secretary of State agrees to perform the Funding Agreement and be bound by its terms in every way as if the Incoming Party were the original party to it in place of the Outgoing Party.

## **OBLIGATIONS AND LIABILITIES**

3. With effect from the Transfer Date:
  - a. the Outgoing Party and the Secretary of State release each other from all future obligations to the other under the Funding Agreement;
  - b. each of the Outgoing Party and the Secretary of State releases and discharges the other from all claims and demands under or in connection with the Funding Agreement arising after the Transfer Date; and
  - c. each of the Incoming Party and the Secretary of State will have the right to enforce the Funding Agreement and pursue any claims and demands under the Funding Agreement against the other with respect to matters arising before, on or after the Transfer Date as though the Incoming Party were the original party to the Supplemental Funding Agreement instead of the Outgoing Party.

## **VARIATION**

4. The Secretary of State and the Incoming Party agree that with effect from the Transfer Date the Funding Agreement shall be amended and restated so as to take effect in the form set out in Schedule 2 to this Deed.
5. As varied by this Deed, the Funding Agreement shall remain in full force and effect.

## **GOVERNING LAW**

6. This Deed shall be governed by and interpreted in accordance with the law of England and Wales.

## **JURISDICTION**

7. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Deed or its subject matter or formation (including non-contractual disputes or claims).

## **COUNTERPARTS**

8. This Deed may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

**IN WITNESS** whereof this Deed has been executed by the Parties hereto and is intended to be and is hereby delivered on the date first above written.

EXECUTED as a deed by affixing the corporate seal )  
of **THE SECRETARY OF STATE FOR EDUCATION** )  
authenticated by:- )



*Stowun*

Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**

EXECUTED as a deed by  
**ORMISON ACADEMIES TRUST**  
acting by one director in the  
presence of a witness:

Director *N.A. Hudson*  
Print name **N.A. HUDSON**

Witness *Julia Hayes*  
Print name **Julia Hayes**  
Address **114 Newhall St. B'ham B3 1R7**  
Occupation **Project Manager**

EXECUTED as a deed by  
**SANDYMOOR FREE SCHOOL**  
acting by one director in the  
presence of a witness:

Director .....  
Print name.....

Witness .....  
Print name.....  
Address.....  
Occupation.....

**SCHEDULE 1**  
**Funding Agreement**



**IN WITNESS** whereof this Deed has been executed by the Parties hereto and is intended to be and is hereby delivered on the date first above written.

EXECUTED as a deed by affixing the corporate seal )  
of **THE SECRETARY OF STATE FOR EDUCATION** )  
authenticated by:- )

.....  
Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**

EXECUTED as a deed by  
**ORMISON ACADEMIES TRUST**  
acting by one director in the  
presence of a witness:

Director .....  
Print name.....

Witness .....  
Print name.....  
Address.....  
Occupation.....

EXECUTED as a deed by  
**SANDYMOOR FREE SCHOOL**  
acting by one director in the  
presence of a witness:

Director .....  
Print name.....

Witness .....  
Print name.....  
Address.....  
Occupation.....

**SCHEDULE 1**  
**Funding Agreement**



## DEED OF VARIATION TO THE FUNDING AGREEMENT

THIS DEED is made the *26* day of *October* 2018

### BETWEEN

- 1) The Secretary of State for Education (the "**Secretary of State**"); and
- 2) Sandymoor Free School, (the "**Company**") a charitable company incorporated in England and Wales with registered number 07635438

together, the "**Parties**".

### INTRODUCTION

- A. The Parties entered into a funding agreement dated 9 August 2012 relating to the establishment, maintenance and funding of Sandymoor Free School ("the Academy") (the "**Funding Agreement**").
- B. The Parties now wish to vary and amend certain terms and conditions of the Funding Agreement in accordance with the terms of this Deed.
- C. This Deed is supplemental to the Funding Agreement.

### 1. INTERPRETATION

- 1.1 Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Funding Agreement.

### 2. VARIATION OF THE FUNDING AGREEMENT

- 2.1 The Parties agree that with effect from 1 September 2017 the Funding Agreement shall be amended as follows:
  - 2.1.1 by deleting clauses 43 to 43D) of the Funding Agreement and replacing it with clauses 43A to 43E as set out in Schedule 1.
- 2.2 Except as varied by this Deed, the Funding Agreement shall remain in full force and effect.

### 3. Governing law and jurisdiction

- 3.1 This Deed, and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with English law.
- 3.2 The parties irrevocably agree that the English courts have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

### 4. Counterparts

4.1 This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

**IN WITNESS** whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

EXECUTED as a deed by affixing the corporate seal of the Secretary of State for Education authenticated by:- )  
)  
)

*K M. H. S. D. C. H.*

.....  
Duly authorised by the Secretary of State for Education



EXECUTED as a deed by SANDYMOOR FREE SCHOOL acting by:

.....  
[Redacted signature]

Director

) [Redacted]  
) [Redacted]  
) [Redacted]

In the presence of:

W  
I  
T  
N  
E  
S  
S

Sign [Redacted]  
Name [Redacted]  
Address [Redacted]  
Occupation [Redacted]

## **Schedule 1**

**43A** The academy was funded on estimates from opening until the Academy Funding Year 2016/17 where it transferred to lagged census funding. From 1 September 2017 and subject to clause 43C the basis of the pupil number count for the purposes of determining GAG for an Academy Funding Year will be the Academy Trust's most recent estimate provided in accordance with clause 43B.

**43B** The Secretary of State will now base the Academy GAG calculation for the 2017/18 year on the October 2017 census figure.

**43C** From 1 September 2018 (unless otherwise determined by the Secretary of State) the basis of the pupil count for the purpose of determining GAG will no longer be the estimate provided in accordance with clauses 43A and B, but in that and all following Academy Funding Years will be lagged census funding.

**43D** For any Academy Funding Year in which GAG for the Academy has been calculated in accordance with clauses 43.A and 43.B, an adjustment may be made to the following Academy Funding Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Census for the relevant month (determined at the Secretary of State's discretion) for the Academy Funding Year in question as a means of determining pupil numbers.

**43E** From 1 September 2018 the basis of the pupil count for determining GAG will be:

- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
- b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools

**SANDYMOOR FREE SCHOOL**

**SANDYMOOR FREE SCHOOL  
FUNDING AGREEMENT**

**9 August 2012**

**Sandymoor Free School  
FUNDING AGREEMENT**

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## **INTRODUCTION**

- 1) This Agreement is made under section 1 of the Academies Act 2010 between the Secretary of State for Education ("the Secretary of State") and Sandymoor Free School (the "Academy Trust").
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 07635438.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) "Academies Financial Handbook" - clauses 59 and 68;
  - b) "Accounting Officer" – clause 58;
  - c) "Annual Letter of Funding" - clause 53;
  - d) "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
  - e) "GAG" – clause 41;
  - f) "Capital Expenditure" - clause 36;
  - g) "Capital Grant" – clause 36;
  - h) "EAG" - clause 48;
  - i) "Recurrent Expenditure" – clause 35.
- 4) In this Agreement the following words and expressions shall have the following meanings:-

"Academy Financial Year" means the year from [1<sup>st</sup> April to 31<sup>st</sup> March] [1<sup>st</sup> September to 31<sup>st</sup> August] in any year or such other period as the Secretary of State may from time to time specify by notice in writing to the Academy Trust;

"Academy Funding Year" means the year from 1<sup>st</sup> September to 31<sup>st</sup> August in any year;



**"Additional Governors" means Governors who may be appointed by the Secretary of State under the Articles of Association;**

**"the Agreement for Lease" means the agreement between the Landlord and the Academy Trust to enter into the Lease.**

**"Business Day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971;**

**"Control" in relation to a body corporate ('Entity') means either the legal or beneficial ownership of 30 per cent or more of the issued shares in the Entity ordinarily having voting rights or the power of a person ('A') otherwise to secure –**

**(a) either by means of the holding of shares in that Entity or having an interest conferring voting rights at general meetings of the membership of that Entity or of any other body corporate;**

**(b) by virtue of any powers conferred by the articles of association or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the governing body thereof, or**

**(c) by virtue of any agreement, understanding or arrangement between any person or persons,**

**that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and 'Control' shall be construed accordingly;**

**"Debt" means the amount equal to 100% of the Land Value;**

**"DfE" means Department for Education and any successor;**

**"Discharge Process"**

**means the removal of:-**

- i. Such of Legal Charge 1 and Legal Charge 2 as are registered with Companies House as against the Academy Trust;
- ii. Such of Legal Charge 1 and Legal Charge 2 as are registered from the charges register at the Land Registry against the title for the Land;
- iii. the restrictions in the proprietorship register as referred to in 108B) i) a) and 108B ii); and
- iv. the notices in the proprietorship register as referred to in 108F) i) (a) and 108F) ii);

"the Freehold Land" means the freehold interest in the Land

"Further Governors" means Governors who may be appointed by the Secretary of State under the Articles of Association if a Special Measures Termination Event, as defined in this Agreement, occurs or the Secretary of State is satisfied that a Member or Governor of the Academy Trust is not a suitable person, or under any other provision of this Agreement;

"Insured Risks" means fire lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of water tanks and pipes earthquake damage by aircraft and other aerial devices or articles dropped there from riot and civil commotion labour disturbance and malicious damage and such other risks as the Academy Trust insures against from time to time subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

"LA" means the Local Authority in the area in which the Academy is situated;

"the Land" means the land (including for the avoidance of doubt all buildings, structures, landscaping and other erections) situated at and known as land at Wharton Lane, Sandymoor, Runcorn, Cheshire (currently expected to be as edged red on the plan attached as Annex E to this Agreement but which may be subject to variation), making up the permanent site of the Academy and which is to form the subject of the Lease, or the part of such land remaining in the ownership of the Academy Trust, following any disposal in accordance with clause 108I(c) ii or clause 108K;

"Land Value" means, at any time:-

(a) where there has been a disposal of the Land as a result of the enforcement of Legal Charge 1 or Legal Charge 2 by the Secretary of State, the proceeds of that disposal after payment of any necessary and reasonable costs incurred by the seller in connection with such disposal; or

(b) in any other case, the Market Value of such legal interest in the Land as is held by the Academy Trust ;

"the Lease" means the leasehold agreement or its equivalent between the Academy Trust and the Homes and Communities Agency ("the Landlord") in respect of the site upon which the Academy is to be permanently situated and which is to be registered with the Land Registry upon the Academy Trust entering into the Lease;

"the Lease of the Temporary Site" means the three year lease which the Landlord and the Academy Trust are to enter into in respect of the Temporary Site.

"Legal Charge 1" means the legal charge to be entered into upon the entering into of the Lease by the Academy Trust in favour of the Secretary of State over the Land, in a form and substance satisfactory to the Secretary of State,

"Legal Charge 2 means the legal charge to be entered into by the Academy Trust in favour of the Secretary of State in a form and substance satisfactory to the Secretary of State upon any acquisition by the Academy Trust of the Freehold Land;

"Market Value" the market value of the relevant part of the Land (as that term is defined or referred to in the RICS Appraisal and Valuation Manual (current edition) published by RICS), as determined by a professionally qualified independent valuer;

"Memorandum" and "Articles" means the Memorandum and Articles of Association of the Academy Trust for the time being in force, a copy of the current version of which is annexed to this Agreement as Annex A;

"parents" means parents or guardians;

"persons" includes a body of persons, corporate or incorporate;

"Principal" means the head teacher of the Academy;

"Principal Regulator" means the body or person appointed as the Principal Regulator under the Charities Act 2011;

"Rent" means a payment made by the Academy Trust to a third party pursuant to the Lease but subject to the terms of clause 56 of this Agreement;

references to "school" shall where the context so admits be references to the Academy;

"SEN" means Special Educational Needs;

"SENCO" means Special Educational Needs Co-ordinator; and

"Start-up period" means up to a maximum of [X] Academy Funding Years and covers the period [up to]/[up to and including] the first Academy Funding Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present).

"the Temporary Site" means the land (including for the avoidance of doubt all buildings structures landscaping and other erections) situated at and known as land at Wharton Lane, Sandymoor, Runcorn, Cheshire which land is for the purposes of identification shown edged red on the plan attached as Annex E to this Agreement and which is to be subject to the Lease of the Temporary Site.

- 5) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.
- 6) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.
- 7) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust.
- 8) Section 1 (3) of the Academies Act 2010 states that:

(3) An Academy agreement is an agreement between the Secretary of State and

the other party under which-

- (a) the other party gives the undertakings in subsection (5), and
- (b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.

#### **LEGAL AGREEMENT**

- 9) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England to be known as the Sandymoor Free School ("the Academy") and meeting such requirements as are referred to in clause 10, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

#### **ACADEMY REQUIREMENTS**

- 10) The Academy requirements are those set down in Section 1A of the Academies Act 2010.

#### **ACADEMY OPENING DATE**

- 11) The Academy shall open as a school on 3 September 2012.

#### **CONDITIONS OF GRANT**

##### **General**

- 12) Other conditions and requirements in respect of the Academy are that:
- a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
  - b) there will be assessments of pupils' performance as they apply to maintained schools and the opportunity to study for qualifications in accordance with clause 29 (d);
  - c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained

schools, subject to any exceptions in Annex B;

d) teachers' levels of pay and conditions of service at the Academy will be the responsibility of the Academy Trust;

e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN; and

(f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge;

### **Governance**

13) The Academy will be governed by a governing body ("the Governing Body") who are the Directors of the company constituted under the Articles of the Academy Trust.

14) The Governing Body shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of Academies that the Secretary of State may publish.

### **Conduct**

15) The Academy shall be conducted in accordance with:

a) the Articles, which shall not be amended by the Academy Trust without the written consent of the Secretary of State, such consent not to be unreasonably withheld;

b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy;

c) the terms of this Agreement.

### **Criminal Records Bureau Checks**

16) The Academy Trust shall comply with the requirements of part 4 of Schedule 1 to

the Education (Independent School Standards) (England) Regulations 2010 (SI 2010/1997) (as amended) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Governors and the Chair of the Governing Body.

16A) The Academy Trust shall, on receipt of information from the Criminal Records Bureau in response to an application for an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit such information to the Secretary of State in accordance with section 124 of the Police Act 1997.

### **Pupils**

17) The planned capacity of the Academy is [insert] places in the age range 11-18, [including a sixth form of 300 places] The Academy will be an all ability inclusive school whose requirements for:

- a) the admission of pupils to the Academy are set out in Annex B to this Agreement;
- b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex C to this Agreement;
- c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended from time to time, and includes any successor provisions).

### **Designated Teacher for Looked After Children**

17A) The Academy Trust will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by a LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Governing Body of the Academy

Trust.

**Teachers and other staff**

- 18) Subject to clause 19, the Academy Trust shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.
- 19) Clause 18 does not apply to anyone who (a) is appointed as the SENCO by the Academy Trust under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or (b) is appointed as a designated teacher for looked after children further to clause 17A.
- 20) The Academy Trust shall ensure that all teachers employed at the Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.
- 21) The Academy Trust shall ensure that all employees at the Academy other than teachers ("Non-teaching Staff") have access to either the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] ("the Regulations"), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching staff.

**Curriculum, curriculum development and delivery, and RE and collective worship**

- 22) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.
- 22A) The Academy Trust shall publish information in relation to its current curriculum provision. Such information shall include details relating to
- a) the content of the curriculum;



b) its approach to the curriculum;

c) the GCSE options (and other Key Stage 4 qualifications) offered by the Academy;

d) the names of any phonics or reading schemes in operation for Key Stage 1; and

e) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.

22B) Subject to the requirements of clauses 22 to 28B, the curriculum will be the responsibility of the Academy Trust.

23) The Academy Trust shall ensure that the broad and balanced curriculum includes English, Mathematics and Science.

23A) Sections 42A (provision of careers guidance) and 45A (guidance as to discharge of duties) of the Education Act 1997 shall be deemed to apply to the Academy with the following modifications:

a) the Academy shall be treated as falling within the meaning of "a school" under section 42A (2);

b) the Academy Trust shall be deemed to be the "responsible authorities" for the purposes of subsection 42A(3); and

c) references to registered pupils shall be treated as references to registered pupils at the Academy.

24) The Academy Trust shall make provision for the teaching of religious education and for a daily act of collective worship at the Academy.

24A) The Academy Trust shall not make provision in the context of any subject for the teaching, as an evidence-based view or theory, of any view or theory that is contrary to established scientific and/or historical evidence and explanations.

25) Not used.

26) Where the Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:

- a) subject to clause 27, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) subject to clause 27, the Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community or foundation school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.
- c) the Academy Trust:
  - (1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for the Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State;
  - (2) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Academy Trust making such an application.

27) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 25 or 26 as appropriate.

28) The Academy Trust shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its

importance for family life and for bringing up children. The Academy Trust shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to the Academy as if it were a maintained school.

28A) The Academy Trust agrees to act in accordance with sections 406 (Political Indoctrination) and 407 (Duty to secure balanced treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:

- a) references to any maintained school shall be treated as references to the Academy;
- b) references to registered pupils shall be treated as references to registered pupils at the Academy;
- c) references to the governing body or the local authority shall, in each case, be treated as references to the Academy Trust; and
- d) references to the head teacher shall, in each case, be treated as references to the Principal of the Academy.

28B) The Academy Trust shall ensure that principles are promoted which support fundamental British values, including: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.

### **Assessment**

29) The Secretary of State will notify the appropriate body for assessment purposes about the Academy.

- a) The Academy Trust shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupils' performance as they apply to maintained schools.
- b) The Academy Trust shall report to any body on assessments under clause 29 as the Secretary of State shall require and shall provide such information

as may be required by that body as applies to maintained schools.

- c) In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements as required by the Secretary of State.
- d) The Academy Trust may offer:-
  - (i) any course of education or training at the Academy which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000; and
  - (ii) any course of education or training not falling within paragraph (i) if the Secretary of State gives his specific written approval for it.

29A) The Academy Trust shall ensure that the following information is published on the Academy's website:

- a) The school's most recent key stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:
  - (i) "% achieving Level 4 or above in English and Maths";
  - (ii) "% making expected progress";
  - (iii) in relation to English, "% achieving Level 5 or above"; and
  - (iv) in relation to Maths, "%achieving Level 5 or above".
- b) The school's most recent key stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:
  - (i) "% achieving 5 + A\* - C GCSEs (or equivalent) including English and Maths GCSEs";
  - (ii) "% achieving the English Baccalaureate"; and
  - (iii) "% of pupils making expected progress".

- c) Information as to where and by what means parents (including prospective parents) may access the most recent report about the school published by her Majesty's Chief Inspector of Education, Children's Services and Skills.
- d) Information as to where and by what means parents (including prospective parents) may access the School Performance Tables published by the Secretary of State on the Department for Education's website.

### **International Education Surveys**

29B) Section 538A of the Education Act 1996 (power to direct participation in international surveys) shall be deemed to apply to the Academy with the following modifications:

(a) references to the governing body shall be treated as references to the Academy Trust; and

(b) references to community, foundation voluntary school shall be treated as references to the Academy.

### **Exclusions Agreement**

30) The Academy Trust shall, if invited to do so by a LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

a) the Academy Trust admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or

b) the Academy Trust permanently excludes a pupil from the Academy

payment will flow between the Academy Trust and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2011.

### **School Meals**

31) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 32 charges may be levied for lunches, but the Academy Trust shall otherwise fund the cost of such school lunches from its GAG.

32) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy Trust shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Academy Trust's GAG.

### **Charging**

33) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 (including, for the avoidance of doubt, any secondary legislation made further to those provisions) shall be deemed to apply to the Academy with the following modifications:

- a) references to any maintained school shall be treated as references to the Academy;
- b) references to registered pupils shall be treated as references to registered pupils at the Academy;
- c) references to the governing body or the local authority shall, in each case, be treated as references to the Academy Trust;
- d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
- e) the Academy Trust may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

### **Pupil Premium**

33A) The Academy Trust shall publish in each Academy Financial Year information in relation to:

- a) the amount of Pupil Premium allocation that it will receive during that Academy Financial Year;
- b) what it intends to spend the Pupil Premium allocation on;
- c) what it spent its Pupil Premium on in the previous Academy Financial Year;
- d) the impact in educational attainment, arising from expenditure of the previous Academy Financial Year's Pupil Premium.

### **Duration of School Day and Year**

33B) The duration of the school day and year will be the responsibility of the Academy Trust.

## **GRANTS TO BE PAID BY THE SECRETARY OF STATE**

### **General**

34) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy. For the purposes of this clause and clauses 58 onwards an Academy Financial Year shall be deemed to run from [1<sup>st</sup> April to 31<sup>st</sup> March] [1<sup>st</sup> September to 31<sup>st</sup> August]<sup>1</sup> or such other period as the Secretary of State may from time to time specify by notice in writing to the Academy Trust. For the purposes of clauses 35 to 57 an Academy Funding Year shall be deemed to run from 1<sup>st</sup> September to 31<sup>st</sup> August, to align with funding allocations. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular

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<sup>1</sup> Ensure that the Academy Financial Year chosen here aligns with the definition in the Articles of Association

amount of grant.

35) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within Capital Expenditure. The Secretary of State shall pay separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG"), Earmarked Annual Grant ("EAG") and where appropriate Additional Funding under clause 56.

### **Capital Grant**

36) "Capital Expenditure" means expenditure on:

- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;
- d) the purchase of vehicles and other self-propelled mechanical equipment;
- e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;
- h) works of a permanent character other than the purchase or replacement of minor day-to day items;



- i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l) VAT and other taxes payable on any of the above.

**"Capital Grant" means grant paid to the Academy Trust in respect of Capital Expenditure.**

- 37) Where the Academy is to open in new premises, to move to newly constructed premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State may, in his absolute discretion, be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.
- 38) Any Capital Expenditure incurred in respect of the Academy, on which Capital Grant payments are sought from the Secretary of State, will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.
- 39) Any payment of Capital Grant to the Academy Trust under this Agreement is subject to the fulfilment of the following conditions:
- a) such grants are used solely to defray expenditure approved by the Secretary of State;
  - b) the Academy Trust certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place; and
  - c) any other conditions that the Secretary of State may specify.

### **Arrangements for Payment of Capital Grant**

40) Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Academy Trust so much of the claim as shall not be in dispute.

### **General Annual Grant**

41) GAG will be paid by the Secretary of State to the Academy Trust in order to cover the normal running costs of the Academy. These will include, but are not limited to:

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- c) employees' expenses;
- d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of

furniture and fittings;

- g) insurance, provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Academy Trust (whether at a cost to the Academy Trust or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Academy Trust, the Secretary of State shall provide a contribution through GAG in relation to such cost;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of Special Educational Needs);
- l) administration;
- m) establishment expenses and other institutional costs.

42) Subject to clauses 44-45, GAG for each Academy Funding Year for the Academy will include:

- a) Funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at the Academy;
- b) Funding for the cost of functions which would be carried out by the local authority if the Academy were a maintained school, such funding to be determined at the discretion of the Secretary of State;
- c) Funding for matters for which it is necessary for the Academy to incur extra

costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and

- d) Payments equivalent to further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria\_necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State;

43) Subject to clause 43AA, the basis of the pupil number count for the purposes of determining GAG for an Academy Funding Year will be the Academy Trust's most recent estimate provided in accordance with clause 43A.

43A) The Secretary of State shall in advance of each Academy Funding Year for the Academy, at such time or times as he shall determine, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the Academy for the purposes of determining GAG for an Academy Funding Year, and the Academy Trust shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.

43AA) Once the condition specified in clause 43B) has been satisfied with respect to the Academy for the Academy Funding Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the [[October]/[January]] preceding the Academy Funding Year in question;

and

- b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

43B) For the purpose of clause 43AA), the condition is satisfied [in the Academy Funding Year which immediately follows the Academy Funding Year in which all

planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present.

43C) For any Academy Funding Year in which GAG for the Academy has been calculated in accordance with clauses 43) and 43A), an adjustment may be made to the following Academy Funding Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than or lower than 2.5%. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the January census for the Academy Funding Year in question as a means of determining pupil numbers in an Academy Funding Year. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.

43D) For any Academy Funding Year in which GAG for the Academy is calculated in accordance with clause 43AA), no adjustment will be made to the equivalence funding element in the following Academy Funding Year's equivalence funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent.

44) The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

45) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 42-43D, in order to enable the Academy to operate effectively.

46) The Secretary of State also recognises that if this Agreement is terminated for

any reason by either party the number of pupils at the Academy is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

47) GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the Academy.

### **Earmarked Annual Grant**

48) Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Academy Trust in respect of either Recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Academy Trust and as described in the relevant funding letter. The Academy Trust shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.

49) Where the Academy Trust is seeking a specific EAG in relation to any Academy Funding Year, it shall submit a letter outlining its proposals and the reasons for its request to the Secretary of State at an address notified from time to time.

### **Arrangements for Payment of GAG and EAG**

50) The Secretary of State shall notify the Academy Trust at a date preceding the start of each Academy Funding Year of the GAG and EAG figures in respect of the Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Funding Year and of the assumptions and figures on which these are based.

51) If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:

- a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Funding Years;
- b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Funding Years, as

appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

52) If GAG or EAG is calculated incorrectly because the Academy Trust provides incorrect information to the Secretary of State then:

- a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Funding Years;
- b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Funding Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

53) The amounts of GAG for an Academy Funding Year will be determined annually by the Secretary of State. The amount of GAG for the Academy for the initial Academy Financial Year will be notified to the Academy Trust in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Academy Trust in a funding letter preceding that Academy Funding Year (the "Annual Letter of Funding"). The Annual Letter of Funding or its equivalent will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is incomplete. Such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or its equivalent or as soon as practicable thereafter.

54) The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding or its equivalent.

#### **Additional Funding**

55) Not used.

56) Not used.

57) The Academy Trust may also receive funding from a LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in

accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Academy Trust shall ensure that all provision detailed in statements of SEN is provided for such pupils.

## **Financial and Accounting Requirements**

### **General**

58) The Academy Trust shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.

59) In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DfE and amended from time to time or any other publication which the DfE notifies in writing to the Academy Trust that it is required to follow in addition to, or instead of, the Academies Financial Handbook, which sets out in detail provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of it being a charity.

60) The formal budget plan must be approved each Academy Financial Year by the Governing Body of the Academy Trust.

61) Any payment of grant by the Secretary of State in respect of the Academy is subject to his being satisfied as to the fulfilment by the Academy Trust of the following conditions:

a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;

b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;

c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Academy Trust shall prepare its financial statements,



Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as if the Academy Trust was a non-exempt Charity and/or in such form or manner as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator by [31 December /20 May]<sup>2</sup> each Academy Financial Year;

d) a statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;

e) the Academy Trust shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;

f) the Academy Trust prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;

g) the Academy Trust shall publish on its website its Annual Accounts, Annual Report, Memorandum and Articles of Association, Funding Agreement and a list of the names of the Governors of the Academy Trust;

h) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of the Lease.

62) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.

63) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable

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<sup>2</sup> For Academies with a Financial Year from September to August use 31 December. For Academies with a Financial Year from April to March use 20 May

times to officials or agents of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

64) The Academy Trust shall submit indicative budgets relating to the Academy to the Secretary of State by not later than 15 February before the start of each Academy Funding Year. Such budgets shall set out clearly the prospective income and expenditure of the Academy and shall differentiate, and give adequate details of:

a) a statement of expected income for that Academy Funding Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards Capital and Revenue Expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards Capital Expenditure will not be taken into account by the Secretary of State in the calculation of GAG;

b) a statement of proposed Recurrent Expenditure for that Academy Funding Year;

c) a statement of proposed Capital Expenditure for that Academy Funding Year.

65) At the beginning of any Academy Funding Year the Academy Trust may hold unspent GAG from previous Academy Funding Years amounting to such percentage (if any) as the Secretary of State may specify by notice in writing to the Academy Trust prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Funding Year just ended or such higher amount as may from time to time be agreed. The Academy Trust shall use such carried forward amount for such purpose, or subject to such restriction on its use, as the Secretary of State may specify by notice in writing to the Academy Trust.

66) Notwithstanding clause 65, any additional grant provided over and above that set out in clauses 42-43D, and made in accordance with clauses 44-45 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 45 come to an end.

67) Any savings of GAG not allowed to be carried forward under clauses 65-66 will be taken into account in the payment of subsequent grant.

67A) If the Secretary of State pay grant not including GAG to the Academy Trust on condition either that such grant be used for a particular purpose or purposes or that such grant be used by a certain date, any failure on the part of the Academy Trust to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State either:

- (i) in the same Academy Funding Year that such grant is paid to the Academy Trust; or
- (ii) in the calculation and/or payment of any subsequent grant to the Academy Trust; or
- (iii) by an adjustment to the GAG paid by the Secretary of State to the Academy Trust in the following Academy Funding Year or Academy Funding Years.

67B) If the Secretary of State or his agents pay any grant to the Academy Trust which includes an amount to cover the VAT which will be payable by the Academy Trust in using any such grant for the purposes intended, the Academy Trust shall, having paid the VAT to a third party for any goods or services it has purchased from such a third party, where entitled, promptly and, in any event, as soon as is reasonably practicable, submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC) in respect of such VAT payment. Any failure, on the part of the Academy Trust, to submit a VAT reclaim application to HMRC or repay the amount recouped to the Secretary of State as soon as reasonably practicable following the receipt of any such payment from HMRC may be taken into account by the Secretary of State either:

- (a) in the same Academy Funding Year that any such grant is paid to the Academy Trust; or
- (b) in the calculation and/or payment of any subsequent grant to the Academy Trust; or
- (c) by an adjustment to the GAG paid by the Secretary of State to the Academy Trust in the following Academy Funding Year or Academy Funding Years.

68) The Academy Trust may also spend or accumulate funds from private sources or

public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit provided that it complies with all applicable requirements relating to the proper and regular use of funds in the Academies Financial Handbook. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.

69) The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

- a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations;
- b) write off any debts or liabilities owed to it above a value from time to time being specified by the Secretary of State, nor offer to make any ex gratia payments;
- c) make any sale or purchase of or otherwise dispose of freehold or leasehold property; or
- d) grant or take up any leasehold or tenancy agreement.

70) The Academy Trust shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's approval, of its intention to:

- a) give any guarantees, indemnities or letters of comfort;
- b) write off any debts owed to it or offer to make any ex gratia payments;
- c) make any sale or purchase of or otherwise dispose of freehold or leasehold property; or
- d) grant or take up any leasehold or tenancy agreement.

71) Each discovered loss of an amount exceeding the amount from time to time being specified by the Secretary of State, and arising from suspected theft or fraud, shall be reported by the Academy Trust to the Secretary of State at the earliest opportunity.

72) It is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Academy Trust from:

a) subject to clause 65, carrying a surplus from one Academy Financial Year to the next; or

b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or

c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

72A) The Academy Trust shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit'), as amended from time to time. Any references in such guidance which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

### **Borrowing Powers**

73) The Academy Trust shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval at the absolute discretion of the Secretary of State. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, must be approved by the Academy Trust in a General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

74) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 73 above.

## **Disposal of Assets**

75) Where the Academy Trust acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Academy Trust at nil or nominal consideration and which were previously used for the purposes of an Academy and/or were transferred from a LA, the value of which assets shall be disregarded.

76) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Academy Trust shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:

a) the Secretary of State paid capital grant in excess of the value from time to time being specified by the Secretary of State for the asset; or

b) the asset was transferred to the Academy Trust from a LA for no or nominal consideration.

77) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding the value from time to time being specified by the Secretary of State or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.

78) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Academy Trust. In this event, the Academy Trust shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Academy Trust for its charitable purposes.

79) This clause applies in the event, during the lifetime of this Agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Academy Trust from an LA for no or nominal consideration. In this event the

Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Academy Trust. The Secretary of State will have regard to any representations from the Academy Trust and the LA from which the asset was transferred before giving consent under this clause.

80) Except with the consent of the Secretary of State, the Academy Trust shall not dispose of assets funded (whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

81) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 80 above.

## **TERMINATION**

### **General**

82) Either party may give not less than seven Academy Funding Years' written notice to terminate this Agreement, such notice to expire on 31 August or any subsequent anniversary of that date, save where the provisions of this Agreement otherwise provide.

83) If the Secretary of State is of the opinion that the Academy no longer meets the requirements set out in clause 10 of this Agreement or that the conditions and requirements set out in clauses 12-33B of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may give notice of his intention to terminate this Agreement.

84) Any such notice shall be in writing and shall:

- a) state the grounds on which the Secretary of State considers the Academy no longer meets the requirements set out in clause 10 of this Agreement or is not meeting the conditions and requirements of clauses 12-33B of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;

- b) specify the measures needed to remedy the situation or breach;
- c) specify a reasonable date by which these measures are to be implemented;  
and
- d) state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided.

85) If no response is received by the date specified in accordance with clause 84(d), the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

86) If a response is received by the date specified in accordance with clause 84(d) the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:

- a) he is content with the response and/or that the measures which he specified are being implemented; or
- b) he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
- c) he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate this Agreement.

87) In the circumstances of clause 86(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within 30 days from such notification, he shall meet a deputation including representatives from the Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not meet the requirements set out in clause 10 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 12-33B of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust 12 months written notice to terminate this Agreement.

88) If the Secretary of State has cause to serve a notice on the Academy Trust under



section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 87 may be shortened to a period deemed appropriate by the Secretary of State.

89) A "Special Measures Termination Event Occurs" when:

- a) the Chief Inspector has given a notice to the Academy Trust in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and
- b) the Chief Inspector has carried out a subsequent inspection of the Academy in accordance with the Education Act 2005 and has made a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
- c) the Secretary of State has requested the Academy Trust to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Academy Trust proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
- d) the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Academy Trust is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.

90) If a Special Measures Termination Event occurs, the Secretary of State may:

- a) terminate this Agreement forthwith by notice in writing to the Academy Trust;
- or
- b) appoint such Further Governors to the Academy Trust as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

91) In the event that the Secretary of State appoints Further Governors in accordance with clause 90(b) or 91A(b), the Academy Trust must, upon the request

of the Secretary of State, procure the resignation of the Governors appointed in accordance with the Article 50 of the Articles of Association.

91A) If the Secretary of State is satisfied that any Governor or Member of the Academy Trust is not a suitable person he may:

- (a) in relation to such a Governor or Member serve notice in writing on the Academy Trust requiring the Academy Trust to procure the resignation or removal of the person(s) within 42 days; and if the Academy Trust fails to procure the said resignation or removal within the time specified, the Secretary of State may by notice terminate this Agreement forthwith or may provide up to 12 months' notice in writing to terminate this Agreement; or
- (b) appoint such Further Governors as he thinks fit and/or provide up to 12 months' notice in writing to terminate this Agreement; or
- (c) by notice in writing terminate this Agreement forthwith or on such date as the Secretary of State may determine.

91B) If the Academy Trust has not obtained full planning permission (including where relevant listed building consent):

- (i) in respect of the Temporary Site by 24 August 2012, or
- (ii) the Land, by 30 November 2013,

the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

91C) i) If at any time after the signing of this Agreement but prior to the Academy opening date, the Secretary of State is of the view that:

- I. the Academy would, on opening, provide an unacceptably low standard of education; or
- II. the safety of pupils or staff at the Academy would, on opening, be threatened; or

- III. the staff employed at the Academy are unsuitable; or
- IV. the buildings and other structures on the Temporary Site are unsuitable or the Academy Trust has not obtained Building Regulation approval;

he may in writing either:

- (a) require the Academy Trust (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Land until such time as the relevant matter or matters listed in 1. to 4. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement forthwith or provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

91C ii) If at any time after the signing of this Agreement but before the Academy has relocated to the Land, the Secretary of State is of the view that:

- I. the safety of pupils or staff at the Academy would on the relocation of the Academy to the Land be threatened; or
- II. the buildings and other structures on the Land are unsuitable or the Academy Trust has not obtained Building Regulation Approval;

he may in writing either:

- (c) require the Academy Trust not to use any building or other structure on the Land until such time as the relevant matter or matters listed in I. to IV. above has or have been resolved to the Secretary of State's satisfaction; or
- (d) terminate this Agreement forthwith or provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

91D i) If the Academy Trust has not entered into the Lease of the Temporary Site by 24 August 2012 the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

91D) ii) If the Academy Trust has not entered into the Agreement for Lease by 30 September 2012 the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

91D) iii) If the Academy Trust has not entered into the Lease by 31 December 2013, the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

91E: At the opening date, the Academy is expected to open with 30 pupils in years 7 and 8. Should the Academy Trust be unable to recruit and maintain a sufficient number of pupils to enable the Academy, in the reasonable opinion of the Secretary of State, to be financially viable, the Secretary of State may:

(a) require the Academy Trust not to open the Academy until such time as the Secretary of State is of the opinion that a sufficient number of pupils have been recruited to enable the Academy to be financially viable;

(b) give a warning notice to the Academy Trust;

(c) by notice terminate this Agreement forthwith; or

(d) provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

For the purposes of this clause a warning notice means a notice in writing from the Secretary of State to the Academy Trust requiring the Academy Trust to procure the admission of such additional pupils as the Secretary of State considers will make the Academy financially viable within such a period as he deems appropriate in the circumstances.

91F: If the Academy has not reached its planned capacity of 880... pupils in the age range 11 to 18 by 2018/2019, or does not remain at that planned capacity of 880 pupils in the age range 11 to 18 (such capacity to be subject to review every 3 years thereafter), the Secretary of State may:

(a) give a warning notice to the Academy Trust and/or provide up to 12 months' notice in writing to terminate the Agreement; or

(b) by notice terminate this Agreement forthwith or provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

For the purposes of this clause "warning notice" means a notice in writing by the Secretary of State to the Academy Trust requiring the Academy Trust to procure the admission of at sufficient number of pupils to enable the Academy to reach the planned capacity of 880 pupils within such period as he deems appropriate in the circumstances.

92) The Secretary of State may at any time by notice in writing terminate this Agreement forthwith on the occurrence of any of the following events:-

a) the Academy Trust calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or

b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or

c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Academy Trust shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or

d) the Academy Trust has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 2011 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or

e) any distraint, execution or other process is levied or enforced on any of the

Academy Trust's property and is not paid out, withdrawn or discharged within fifteen Business Days; or

f) the Academy Trust has passed a resolution for its winding up; or

g) an order is made for the winding up or administration of the Academy Trust.

93) The Academy Trust shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Academy Trust and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

94) If, following the exercise of the Secretary of State's powers to appoint Additional Governors or Further Governors, pursuant to the Articles of Association, the Members pass an ordinary or special resolution to remove one or more of those Additional or Further Governors appointed by the Secretary of State, the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

95) Following the Members passing a resolution as described in clause 94, the Secretary of State's right to terminate this Agreement under clause 94 shall cease if he removes one or more Additional Governors or Further Governors and fails to replace at least one Additional Governor or Further Governor within the 30 days of their removal resulting in there being no remaining Additional Governor or Further Governor on the governing body of the Academy Trust.

#### **Change of Control of the Academy Trust**

95A) (i) The Secretary of State may at any time by notice in writing, subject to sub-clause (iii) below, terminate this Agreement forthwith (or on such other date as he may in his absolute discretion determine) in the event that there is a change:

(a) in the Control of the Academy Trust;

(b) in the Control of a legal entity that Controls the Academy Trust.

Provided that where a person ('P') is a member or director of the body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.

95A) (ii) The Academy Trust shall, as soon as it is reasonably practicable to do so after it has become aware of any change or proposed change of Control within the meaning of clause 95A)(i), give written notice to the Secretary of State of such change or proposed change of control.

95A) (iii) At the time of notifying the Secretary of State in accordance with sub-clause (ii) above, the Academy Trust may seek the Secretary of State's agreement that, if the Secretary of State is satisfied that the person assuming the Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 95A)(i).

#### **Effect of Termination**

96) In the event of the termination of this Agreement however occurring the Secretary of State may procure that his nominee (if any) resigns as a member of the Academy Trust and the Secretary of State shall co-operate in making any associated amendments to the Articles.

97) In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.

98) Subject to clause 99, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, that the Academy no longer meets the requirements set out in clause 10 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 12-33B of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may indemnify the Academy Trust.

99) The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Academy Trust, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

100) The categories of expenditure incurred by the Academy Trust in consequence

of the termination of this Agreement in respect of which the Secretary of State may indemnify the Academy Trust include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

101) Subject to clause 102, on the termination of this Agreement however occurring, the Academy Trust shall in respect of any of its capital assets at the date of termination:

a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

b) if the Secretary of State confirms that a transfer under clause 101(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

102) The Secretary of State may waive in whole or in part the repayment due under clause 101(b) if:

a) The Academy Trust obtains his permission to invest the proceeds of sale for its charitable objects; or

b) The Secretary of State directs all or part of the repayment to be paid to the LA.

103). The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.



## **GENERAL**

### **Information**

104) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, the Academy's:

- a) curriculum;
- b) arrangements for the assessment of pupils;
- c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
- d) class sizes;
- e) outreach work with other schools and the local community;
- f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;
- g) numbers of pupils excluded (including permanent and fixed term exclusions);
- h) levels of authorised and unauthorised absence;
- i) charging and remissions policies and the operation of those policies;
- j) organisation, operation and building management;
- k) financial controls;
- l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') as amended from time to time;
- m) membership and proceedings of the Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 108), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this

Agreement.

105) The Academy Trust shall make such information available to the Secretary of State in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Academy Trust with such information as it may reasonably require of him for the running of the Academy.

105A) (i) The Academy Trust shall provide to the Secretary of State the name of any new or replacement Member or Governor of the Academy Trust, whether such a person has been appointed or elected, together with the date of such an appointment or election and, where applicable, the name of the Member or Governor such a person replaces as soon as is practicable and in any event within 14 days of the appointment or election of such a person.

105A) (ii) In this regard, the Academy Trust shall not appoint any new or replacement Members or Governors of the Academy Trust until it has first (a) notified such persons that their name shall be shared with the Secretary of State and (b) explained to the new or replacement Members or Governors of the Academy Trust that the reason their name is being shared with the Secretary of State is to enable the Secretary of State to assess their suitability.

105B) i) If the Academy Trust is in material breach of the provisions of:

- a) the Lease of the Temporary Site
- b) the Agreement for Lease; or
- c) the Lease

or if it is reasonably foreseeable that the Academy Trust will be in material breach of any of 105B a), b) or c) above, the Academy Trust shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Academy Trust to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.

105B) ii) The Academy Trust will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.

105C) Following the receipt by the Secretary of State of the written notice under clause 105B), the Academy Trust shall permit the Secretary of State to take all such steps in conjunction with or instead of the Academy Trust as may be necessary to remedy or prevent the material breach referred to in the said notice. The Academy Trust shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.

105D)(i) The Academy Trust shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement affecting the ability of the Academy Trust to use the Temporary Site or the Land for the purposes of the Academy from any competent authority, give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Academy Trust intends to take in response to the order, notice, proposal, demand or other requirement affecting the Temporary Site or the Land.

105D) (ii) The Academy Trust will at its own cost provide all information reasonably required by the Secretary of State in respect of order, notice, proposal, demand or any other requirement affecting the Temporary Site or the Land as referred to in clause 105D(i).

105E) i) Following the receipt by the Secretary of State of the written notice under clause 105D)(i), the Academy Trust shall permit the Secretary of State to take all steps in conjunction with or instead of the Academy Trust as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Temporary Site or the Land referred to in the said notice. The Academy Trust shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

105E) ii) In the event that the Academy Trust acquires the Freehold Land, clauses 105D) and 105E) shall apply as though references to the Land were to the Freehold Land.

#### **Access by the Secretary of State's Officers**

106) The Academy Trust shall allow access to the premises of the Academy at any reasonable time to DfE officials and/or agents of the Secretary of State. All records, files and reports relating to the running of the Academy shall be available to them at

any reasonable time. The Academy Trust shall provide the Secretary of State in advance with papers relating to the Academy prepared for meetings of the Governing Body and of the Members of the Academy Trust. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of the Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Academy Trust shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

107) The Academy Trust shall ensure that:

- a) the agenda for every meeting of the Governing Body or any committee to whom the Governing Body delegates one or more of its functions to;
- b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
- c) the signed minutes of every such meeting; and
- d) any report, document or other paper considered at any such meeting,

are made available for inspection by any interested party at the Academy and, as soon as is reasonably practicable, sent to the Secretary of State upon request.

108) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 107, any material relating to:

- a) a named teacher or other person employed, or proposed to be employed, at the Academy;
- b) a named pupil at, or candidate for admission to, the Academy; and
- c) any matter which, by reason of its nature, the Academy Trust is satisfied should remain confidential.

## **LAND CLAUSES**

### **Debt**

108A) a) The Secretary of State has agreed, strictly contingent upon:

(i) the Secretary of State agreeing to fund the acquisition of the Land and the construction and equipment of new school buildings on the Land, and

(ii) the Academy Trust entering into the Lease

to make certain payments of Capital Grant to the Academy Trust pursuant to Clause 37;

108A) b) The payments referred to at 108A(a) are to be made available to the Academy Trust on an interest free basis;

108A) c) In consideration of the Secretary of State making the payments referred to at 108A(a) and financing the acquisition of the Land together with the construction of the new school buildings, the Academy Trust shall pay the Debt upon termination of this Agreement or in accordance with clauses 108H(b) or 108K(a) or upon any disposition by way of sale of the whole or part of the Land or the Freehold Land, whether or not such sale has been consented to by the Secretary of State; and

108A) d) The Debt shall be secured by Legal Charge 1 and if the Academy Trust acquires the Freehold Land, by Legal Charge 2.

#### **Restrictions on Land transfer**

108B) i) In consideration that it has or will, contingent upon the Secretary of State's agreement, be obtaining a legal interest in the Land in the form of the Lease, such acquisition being financed by the Secretary of State, the Academy Trust:

a) shall, within 28 days from the entering into of the Lease, should the Academy Trust be an exempt charity at that time, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) ('LRR 2003') in the following terms:

*No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of*

*the charge dated [date] in favour of The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its conveyancer.*

- b) shall take any further steps reasonably required to ensure that the restriction referred to in clause 108B i) (a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 108B i) (a) as soon as reasonably practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 108B i) (a), hereby consents to the entering of the restriction referred to in 108B i) (a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002); and
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 108B i) (a) or 108B i) (d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

108B ii) In the event that the Academy Trust acquires the Freehold Land, the Academy Trust shall apply to the Land Registry for a further restriction in the proprietorship register, and clauses 108B i) a)-e) shall apply to the Academy Trust and to the restriction referred to in this sub-clause as though references to the entering into of the Lease were to the completion of the acquisition of the Freehold Land.

#### **Obligations of the Academy Trust**

108C) (i) The Academy Trust shall keep the Land and the Temporary Site clean and tidy and make good any damage it causes to the Land or the Temporary Site and / or any deterioration to the condition of the Land or the Temporary Site that may arise

from the date of this Agreement, save that the Academy Trust shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease and the Lease of the Temporary Site. In compliance with this clause, the Academy Trust shall not do or cause or permit to be done anything to lessen the value or marketability of the Land or the Temporary Site save with the express written consent of the Secretary of State.

108C)(ii) The Academy Trust shall observe and comply with its obligations under the Lease and the Lease of the Temporary Site and shall promptly enforce its rights against the Landlord.

108C)(iii) The Academy Trust agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- a) terminate, vary, surrender or dispose of the Lease, the Agreement for Lease or the Lease of the Temporary Site; and / or
- b) grant any consent or licence in respect of the Land or the Temporary Site or any part of either; and / or
- c) create or permit to arise or continue any encumbrance affecting the Land or the Temporary Site or any part of either; and / or
- d) part with or share possession or occupation of the Land or the Temporary Site or any part of either; and / or
- e) enter into any onerous or restrictive obligations affecting the Land or the Temporary Site or any part of either.

108C) (iv) In the event that the Academy Trust acquires the Freehold Land, clauses 108C) (i) and 108C) (iii) shall apply to the Freehold Land as though references to the Land were to the Freehold Land.

#### **Insurance**

108D) i) The Academy Trust shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of the Land or the Temporary Site:-

- a) keep the Land insured as in accordance with the terms of the Lease and/or the Lease of the Temporary Site and in any event with a reputable insurance office against loss or damage by the Insured Risks in the sum the Academy Trust is advised represents the reinstatement value of the Land or the Temporary Site from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land and the Temporary Site;
- c) following the incidence of damage to or destruction of the Land or the Temporary Site and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land or the Temporary Site (provided that this clause should be satisfied if the Academy Trust provides premises not necessarily identical to the Land or the Temporary Site as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium 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);
- e) not knowingly do anything whereby any policy of insurance relating to the Land or the Temporary Site may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability.

108D) ii) In the event that the Academy Trust acquires the Freehold Land, clause 108D i) shall apply to the Freehold Land as though references to the Land were to the Freehold Land.

#### **Transfer of Land**

108E) (i) In consideration that it has or will be obtaining a legal interest in the Land in the form of the acquisition of the Lease, and contingent upon the Academy Trust



acquiring such an interest and such acquisition being financed by the Secretary of State, the Academy Trust hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to re-acquire the said Land or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Academy Trust is unable to use all or part of the Land as the permanent site of the Academy in accordance with clauses 108H or 108K. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

108E (ii) In the event that the Academy Trust acquires the Freehold Land, then the Academy Trust hereby grants and the Secretary of State hereby accepts a further option exercisable by the Secretary of State or his nominee, to re-acquire the Freehold Land or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Academy Trust is unable to use all or part of the Freehold Land as the permanent site of the Academy in accordance with clauses 108H or 108K. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

108F) i) In consideration that it has or will be obtaining a legal interest in the Land in the form of the acquisition of the Lease, and contingent upon the Academy Trust acquiring such an interest and such acquisition being financed by the Secretary of State, the Academy Trust:

- a) shall, within 14 days from the entering into of the Lease, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 108E i) and including a copy of this Agreement as evidence of that option,
- b) shall take any further steps required to ensure that the notice referred to in clause 108F i) (a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 108F i) (a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the notice referred to in clause 108F i) (a), hereby consents to the entering of the notice referred to in 108F i) (a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 108F i) (a) or 108F i) (d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust, and

f) in the case of previously unregistered land, for the further protection of the option granted in Clause 108E the Academy Trust shall within 14 days of the entering into of the Lease make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Academy Trust has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

108F ii) In the event that the Academy Trust acquires the Freehold Land the Academy Trust shall apply to the Land Registry for a further notice in the register to protect the option granted under clause 108E ii), and clauses 108F i) a)-f) shall apply to the Academy Trust and to the notice referred to in this sub-clause as though references to the entering into of the Lease were to the completion of the acquisition of the Freehold Land.

### **Legal Charge**

108G) (i) In consideration that it has or will be obtaining a legal interest in the Land in

the form of the acquisition of the Lease, and contingent upon the Academy Trust acquiring such an interest and such acquisition being financed by the Secretary of State, the Academy Trust:

- a. shall enter into Legal Charge 1 upon completion of the acquisition of said interest;
- b. shall, within 21 days from the entry into of Legal Charge 1, register Legal Charge 1 with Companies House or if required by the Secretary of State shall use all reasonable endeavours to assist the Secretary of State to register Legal Charge 1 at Companies House, including signing and executing any documents, deeds and/or forms as required;
- c. shall, within 28 days from the date of Legal Charge 1, apply to the Land Registry for Legal Charge 1 to be entered on the charges register, using forms AP1 (Rule 13 LRR 2003) and CH1 (Rule 103 LRR 2003) or such form as may be required by the Secretary of State;
- d. shall take any further steps required to ensure that Legal Charge 1 is entered on the charges register;
- e. shall provide the Secretary of State with confirmation of the registration of Legal Charge 1 as soon as reasonably practicable after it receives notification from the Land Registry; and
- f. in the event that it has not registered Legal Charge 1, hereby consents to the registration of Legal Charge 1 by the Secretary of State. To enable the Secretary of State to do so, the Academy Trust shall use all reasonable endeavours to assist the Secretary of State to register Legal Charge 1, including signing and executing any documents, deeds and/or forms as required, specifically but not limited to providing the Secretary of State with the executed Legal Charge 1 and completed AP1/CH1 forms, and dealing with any requisitions raised by the Land Registry.

108G) (ii) In the event that the Academy Trust acquires the Freehold Land then the Academy Trust shall enter into Legal Charge 2 in favour of the Secretary of State and shall comply with clause 108G i) a)-f) as though that clause applied to Legal Charge 2.

### **Failure to use the Land for the purposes of the Academy**

108H) If the Academy Trust is unable to use the Land or the Freehold Land or any part of either as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Academy Trust that:-

- a) he intends to exercise the option granted under clause 108E) i) or 108E ii) to transfer the Land or the Freehold Land or the relevant part thereof for nil consideration to himself or his nominee;
- b) the Academy Trust pays the Debt or the Market Value; and/or
- c) the Academy Trust shall dispose of the Land or the Freehold Land or the relevant part thereof and that, pursuant to clause 78, the Academy Trust may retain some or all of the proceeds of sale of the Land or the Freehold Land or the relevant part thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy Trust, save that any proceeds not used to fund the purchase of an alternative permanent site shall be accounted for to the Secretary of State or his nominee.

### **Sharing of the Land**

108I) The Academy Trust agrees that if:

- a) the Academy does not reach its planned capacity over a period of 7 Academy Funding Years; or
- b) notice of termination is served by either the Academy Trust or the Secretary of State in accordance with clause 82 of this Agreement; or
- c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the Land or the Freehold Land,
  - i. it will share occupation of the Land or the Freehold Land with such other Academy as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State; or

- ii. it will dispose of part of the Land or the Freehold Land as required by the Secretary of State and account for any proceeds of such disposal to the Secretary of State or his nominee as part payment of the Debt. Upon such disposal and part payment of the Debt, the Secretary of State will discharge the Legal Charge in respect of the part of the Land or the Freehold Land that has been disposed of.

### **Exercise of Rights**

108J) On the termination of this Agreement, the Secretary of State may give notice of his intention to exercise the rights conferred upon the Secretary of State pursuant to clause 101, 102, 108E and Legal Charge 1 or Legal Charge 2:

- a) any such notice shall be in writing and shall confirm which clause of this Agreement the Secretary of State intends to exercise without prejudice to the Secretary of State's right to exercise all and any other rights available to him;
- b) in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his option granted and the legal interest in the Land or the Freehold Land is transferred to the Secretary of State or his nominee for nil consideration by the Academy Trust pursuant to clause 108E, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligation on the Academy Trust to pay a proportion of the proceeds of sale of the Land or the Freehold Land to the Secretary of State under clause 101(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- c) in the event that upon termination of this Agreement for whatever reason the Secretary of State enforces Legal Charge or Legal Charge 2, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligation on the Academy Trust to pay a proportion of the proceeds of sale of the Land or the Freehold Land to the Secretary of State under clause 101(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- d) in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his rights under clause 101, the Academy Trust's

obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process; and

- e) in the event that upon termination of this Agreement for whatever reason, the Secretary of State agrees that pursuant to clause 102 the Academy Trust may invest the proceeds of the sale of the Land or the Freehold Land for its charitable objects or directs the Academy Trust to pay all or part of the proceeds of sale of the Land or the Freehold Land to the LA, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

108K) On the Academy Trust applying to the Secretary of State for consent to the disposal of all or part of the Land or the Freehold Land during the lifetime of this Agreement, the Secretary of State shall, should he agree that the Land or the Freehold Land is no longer required or cannot be used for the purposes of the Academy, subject to clause 76,

- a) consent to the disposal subject to any one or a combination of the following conditions:-

- iii. that (notwithstanding the provisions of clause 78) the Academy Trust pays the Debt in full or, in the event of a proposed disposal of part, repays to the Secretary of State the Market Value;
- iv. that pursuant to clause 78, the Academy Trust may retain some or all proceeds of the disposal for its charitable purposes, subject to the Academy Trust accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Academy Trust may retain for such charitable purposes; or
- v. that pursuant to clause 79, the Academy Trust pays all or some of the proceeds of sale to the LA and / or may reinvest all or some of the proceeds of sale for its charitable purposes,

and any such notice of consent and conditions shall be in writing; or

- b) exercise the option granted to him pursuant to clause 108E to transfer the

relevant part of the Land or the Freehold Land to him or his nominee for nil consideration.

108L) In the event that the Secretary of State consents to the disposal of the Land or the Freehold Land during the lifetime of this Agreement, subject to any of the conditions set out in clause 108K(a):

- a) if the Secretary of State enforces Legal Charge 1 or Legal Charge 2, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land or the Freehold Land to the Secretary of State under clause 78 shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.
- b) if the Secretary of State agrees that the Academy Trust may retain some or all proceeds of the disposal for its charitable purposes, subject to the Academy Trust accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Academy Trust may retain for such charitable purposes, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land or the Freehold Land to the Secretary of State under clause 78 shall be deemed to have been complied with and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land or the Freehold Land, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Academy Trust's obligation under clause 78 shall be deemed to have been satisfied in relation to the relevant part of the Land or the Freehold Land, Legal Charge 1 or 2 shall be released as appropriate and the restriction and the notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land or the Freehold Land.
- c) if the Secretary of State directs the Academy Trust to pay all or part of the proceeds of sale of the Land or the Freehold Land to the LA pursuant to

clause 79 or agrees that the Academy Trust may reinvest the proceeds of the sale for its charitable purposes, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land or the Freehold Land the restriction and notice shall remain in place in relation to the balance of the Land or the Freehold Land.

108M) In the event that the Secretary of State exercises his option during the lifetime of this Agreement under clause 108K(b) and the legal interest in the Land or the Freehold Land is transferred to the Secretary of State or his nominee for nil consideration by the Academy Trust pursuant to clause 108E, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land or the Freehold Land to the Secretary of State under clause 78 shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of the exercise of the option in relation to part of the Land or the Freehold Land, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Academy Trust's obligation under clause 78 shall be deemed to have been satisfied in relation to the relevant part of the Land or the Freehold Land, Legal Charge 1 or Legal Charge 2 shall be released as appropriate and the restriction and notice shall be removed in relation to such part and the Legal Charge, and the restriction and the notice shall remain in place in relation to the balance of the Land or the Freehold Land.

#### **Payment of Debt**

108N) In the event that the Academy Trust pays all the Debt, upon termination of this Agreement or at any other time, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

#### **Notices**

109) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Academy Trust at its registered office or such other addressee/address as may be notified in writing from time to time by the Academy Trust and, in the case of a notice or



communication from the Academy Trust to the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.

110) The service by the Secretary of State of a notice of termination of this Agreement shall not prejudice the ability of the Academy Trust (if it wishes to do so) during the notice period to admit pupils to the Academy in accordance with the provisions of this Agreement and to receive GAG and EAG in respect of them.

#### **General**

111) This Agreement shall not be assignable by the Academy Trust.

112) The Secretary of State and the Academy Trust recognise the difficulties in catering in this Agreement for all the circumstances which may arise in relation to the Academy and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academy throughout the currency of this Agreement.

113) The Secretary of State and the Academy Trust agree that, notwithstanding the termination of this Agreement, any obligation upon the Academy Trust and/or the Secretary of State expressed as arising upon the termination of this Agreement shall continue to subsist.

9<sup>th</sup> August

This Agreement was executed as a Deed on

2012

Executed on behalf of by:

[Either

.....  
**Director**

In the presence of:

Witness.....

Address.....

Occupation.....]

[Or

*A.D. Acharya*  
.....  
**Director**

*[Signature]*  
.....]  
**Director/Secretary**

The Corporate Seal of the Secretary of State for Education, hereunto affixed is authenticated by:

*P. Schofield*  
.....

**Duly Authorised**



**SCHEDULE 2**  
**Amended and Restated Funding Agreement**





Department  
for Education

# **Mainstream academy and free school: supplemental funding agreement**

**March 2018 v6**

**Sandymoor Ormison Academy**

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## **SUMMARY SHEET**

### **Information about the Academy:**

<b>Name of Academy Trust</b>	Ormiston Academies Trust
<b>Company number</b>	06982127
<b>Date of Master Funding Agreement</b>	30 July 2018
<b>Name of academy</b>	Sandymoor Ormiston Academy
<b>Opening date</b>	3 September 2012 and transferred to the operation of the Academy Trust on 1 December 2019
<b>Type of academy (indicate whether academy or free school)</b>	Mainstream Free School
<b>Religious designation</b>	N/A
<b>Wholly or partly selective</b>	N/A
<b>Name of predecessor school (where applicable)</b>	N/A
<b>Capacity number</b>	900
<b>Age range</b>	11-18
<b>Number of sixth form places</b>	300
<b>Number of boarding places</b>	N/A
<b>SEN unit / Resource provision</b>	N/A
<b>Land arrangements (Version 1-8 or other)</b>	Version 4
<b>Address and title number of Land</b>	Address: Wharford Lane, Sandymoor, Runcorn, Cheshire, WA7 1QU Title Numbers: CH622149 and CH242117



**Please confirm which clause variations have been applied or marked as 'Not used'**

<b>Clause No.</b>	<b>Descriptor</b>	<b>Applied</b>	<b>Not used</b>
1.I	Only applies to free schools and new provision academies	X	
2.A.1	Clause applies where an academy was previously a VC or foundation school designated with a religious character		X
2.C, 2.D	Only applies where the academy has an SEN unit		X
2.E	Only applies where there was a predecessor independent school		X
2.G	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		X
2.M	Clause applies only to academies and free schools designated with a religious character		X
2.N	Clause applies only to academies that were formerly wholly selective grammar schools		X
2.O	Clause applies only to academies that were formerly partially selective grammar schools		X
2.T	Clause applies to free schools and new provision academies designated with a religious character		X
2.W	Clause only applies where the academy is designated with a religious character		X
2.X	Clause only applies where the academy has not been designated with a religious character	X	
2.Y	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		X
2.Yc)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian'		X

<b>Clause No.</b>	<b>Descriptor</b>	<b>Applied</b>	<b>Not used</b>
3.A – 3.F	Option 1 applies to converter and sponsored academies: if used delete option 2		X
3.A – 3.F	Option 2 applies to free schools and new provision academies: if used delete option 1	X	
3.H	Clause relating to Start-up only applies in some cases (does not apply to academy converters)		X
3.J	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.K	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		X
5.G.1	Clause applies only to a boarding academy/free school.		X
5.I	Clause only applies to sponsored academies		X
5.K	Clause applies to free schools and may be applied to new provision academies		X
5.L	Clause applies to free schools and may be applied to new provision academies	X	
5.M	Clause applies to free schools and may be applied to new provision academies	X	
5.N	Clause applies to free schools and may be applied to new provision academies		X
5.O	Clause applies to free schools and may be applied to new provision academies		X
6.H	Clause only applies to schools which are designated with a Church of England or Roman Catholic character		X

**Please identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a mixture of those designated with a religious character, and those which are not):**

**Additional clauses will be supplied by your project lead if needed.**

Description	Clause No.	Applied	Not used
The execution clause has been removed as this supplemental funding agreement forms a schedule to a deed of novation and variation to amend and restate the existing funding agreement.	Execution Clause		X

## 1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and Ormiston Academies Trust is supplemental to the master funding agreement made between the same parties and dated 30 July 2018 (the “**Master Agreement**”).

### Definitions and interpretation

1.B Except as expressly provided in this Agreement words and expressions defined in the Master Agreement will have those same meanings in this Agreement.

1.C The following capitalised words and expressions will have the following meanings:

“The **Academy**” means Sandymoor Ormiston Academy.

“**Coasting**” has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

“**SEN**” means Special Educational Needs and the expressions “**special educational needs**” and “**special educational provision**” have the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

“**Termination Notice**” means a notice sent by the Secretary of State to the Academy Trust, terminating this Agreement on the date specified in the notice.

“**Termination Warning Notice**” means a notice sent by the Secretary of State to the Academy Trust, stating his intention to terminate this Agreement.

“**Transfer Date**” means 1 December 2019.

1.D The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.

1.E Reference in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes to this Agreement.

## **The Academy**

- 1.F The Academy is a Free School as defined in clause 1.4 of the Master Agreement.
- 1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.
- 1.H The Academy opened on 3 September 2012 under the operation of Sandymoor Free School (company number 07635438) and transferred to the operation of the Academy Trust on the Transfer Date.
- 1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.X of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

## **2. RUNNING OF THE ACADEMY**

### **Teachers and staff**

- 2.A Subject to clause 2.A.2 and 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.
  - 2.A.1 Not used.
  - 2.A.2 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, or are no longer looked

after by an LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.

## **Pupils**

2.B The planned capacity of the Academy is 900 in the age range 11-18, including a sixth form of 300 places. The Academy will be an all ability inclusive school.

## **SEN unit**

2.C Not used.

2.D Not used.

## **Charging**

2.E Not used.

## **Admissions**

2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the “**Codes**”) and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to “**admission authorities**” will be deemed to be references to the Academy Trust.

2.G Not used.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination

for its first intake of pupils.

2.I Not used.

2.J Not used.

2.K Not used.

2.L The Secretary of State may:

a) direct the Academy Trust to admit a named pupil to the Academy:

i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or

b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M Not used.

2.N Not used.

2.O Not used.

2.P The Academy Trust must make arrangements to ensure an independent appeals panel is established for the Academy and its clerk and members are trained to act in accordance with the Codes. The Academy Trust must ensure that parents and 'relevant children' (as described in the Codes) are informed of their right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on

all parties.

- 2.Q Subject to clause 2.R, the meaning of “**relevant area**” for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
- 2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.
- 2.S The Office of the Schools Adjudicator (“**OSA**”) will consider objections to the Academy’s admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this funding agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy’s admission arrangements, that objections should be submitted to the OSA. The OSA’s determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator’s decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.
- 2.T Not used.

### **Curriculum**

- 2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School



Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to “**religious education**” and “**religious worship**” in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.X.

2.W Not used.

2.X Subject to clause 2.V, where the Academy has not been designated with a religious character (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y Not used.

2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

### 3. **GRANT FUNDING**

#### **Calculation of GAG**

3.A Subject to clause 3.C, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 3.B.

3.B The Secretary of State will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the purposes of determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.

3.C In the Academy Financial Year 2021/2022, the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.B, but in that and all following Academy Financial Years will be determined in accordance with clause 3.F.

3.D For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 3.A and 3.B, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Census for the relevant month (determined at the Secretary of State's discretion) for the Academy Financial Year in question as a means of determining pupil numbers. The additional or clawed-back grant will be only the amount relevant to the number of pupils above or below that estimate.

3.E Not used

- 3.F For Academy Financial Years from 2021/2022 onwards , the basis of the pupil count for determining GAG will be:
- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
  - b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.
- 3.G The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.B. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.
- 3.H Not used.
- 3.I The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, or the Master Agreement is otherwise terminated, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

**Other relevant funding**

3.J Not used.

3.K Not used.

## **Carrying forward of funds**

3.L Any additional grant made in accordance with clause 3.I, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice under this Agreement, or otherwise terminates the Master Agreement, may be carried forward without limitation or deduction until the circumstances set out in clause 3.I cease to apply or the Academy closes.

## **4. LAND**

**"Debt"** means an amount equal to 100% of the Land Value;

**"Discharge Process"** means the removal of:

- i. the Legal Charge registered with Companies House against the Academy Trust;
- ii. the Legal Charge from the charges register at the Land Registry against the title for the Land;
- iii. the restriction in the proprietorship register referred to in clause 4.C(a);  
and
- iv. the notice in the proprietorship register referred to in clause 4.H(a).

**"Land"** means the land at Wharford Lane, Sandymoor, Runcorn, Cheshire WA7 1QU, being the land registered with title number CH622149 and part of the land registered with title number CH242117, which is to be the permanent site of the Academy.

**"Land Value"** means, at any time:

- i. where the Land has been disposed of as a result of the enforcement of the Legal Charge by the Secretary of State, the proceeds of that disposal after payment of the seller's necessary and reasonable costs in connection with the disposal; or
- ii. in any other case, the Market Value.

**“Legal Charge”** means the legal charge over the Land to be entered into by the Academy Trust in favour of the Secretary of State, in a form and substance satisfactory to the Secretary of State.

**“Market Value”** means the market value (as defined in the current edition of the RICS Valuation Standards) of the relevant part of the Land as determined by a professionally qualified independent valuer.

**“Property Notice”** means any order, notice, proposal, demand or other requirement issued by any competent authority which materially affects the Academy Trust's ability to use the Land for the purposes of the Academy.

### **Debt**

4.A The Academy Trust must pay the Debt to the Secretary of State on termination of this Agreement or in accordance with clauses 4.J(b) or 4.Q(b)(i) or on a sale of all or part of the Land with or without the Secretary of State's consent.

4.B The Debt is secured by the Legal Charge.

### **Restrictions on Land transfer**

4.C The Academy Trust must:

a) apply to the Land Registry using form RX1 for the following restrictions (each a **“Restriction”**) to be entered in the proprietorship register for the Land by the following deadlines:

i. within 28 days after acquiring the Land:

*“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”; and*

ii. within 28 days after entering into the Legal Charge:

*“No disposition of the registered estate by the proprietor of the*

*registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date of charge] in favour of The Secretary of State for Education referred to in the charges register or by its conveyancer”;*

- b) take any further steps required to ensure that each Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when each Restriction has been registered;
- d) if it has not registered each Restriction, allow the Secretary of State to do so in its place; and
- e) not, without the Secretary of State’s consent, apply to disapply, modify, cancel or remove a Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

#### **Obligations of the Academy Trust**

4.D The Academy Trust must not, without the Secretary of State’s consent:

- a) grant any consent or licence; or
- b) create or allow any encumbrance; or
- c) part with or share possession or occupation; or
- d) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

4.E The Academy Trust must obtain the Secretary of State’s consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Land.

## **Property Notices**

- 4.F If the Academy Trust receives a Property Notice, it must:
- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
  - b) promptly give the Secretary of State all the information he asks for about it;
  - c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
  - d) use its best endeavours to help the Secretary of State in connection with it.

## **Option**

- 4.G The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire all or part of the Land at nil consideration. The Secretary of State may exercise the Option in writing if this Funding Agreement is terminated for any reason, or if the Academy Trust cannot use all or part of the Land as the permanent site of the Academy under clauses 4.J or 4.Q. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society’s Standard Conditions of Sale for Commercial Property in force at that date.

## **Option Notice**

- 4.H The Academy Trust:
- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;

- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State's consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

## **Legal Charge**

### **4.1 The Academy Trust must**

- a) enter into the Legal Charge:
  - i. on completion of the acquisition of the Land, if at that time the Academy Trust is an exempt charity for the purposes of the Charities Act 2011, or
  - ii. within two weeks after the Academy opens, if the Academy Trust is not an exempt charity for the purposes of the Charities Act 2011 when it acquires the Land;
- b) within 21 days from the date of the Legal Charge, register it with Companies House or, if required by the Secretary of State, use all reasonable endeavours to assist the Secretary of State in doing so, including signing and executing any necessary documents;
- c) within 28 days from the date of the Legal Charge, apply to the Land Registry for the Legal Charge to be entered on the charges register,



taking any other steps required to have the Legal Charge registered and promptly confirming to the Secretary of State when this has been done; and

- d) if it has not registered the Legal Charge, allow the Secretary of State to register it, and use all reasonable endeavours to help register the Legal Charge, including signing and executing any necessary documents and dealing with requisitions from the Land Registry.

#### **Land not used for the purposes of the academy**

4.J If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that:

- a) he intends to exercise the Option to transfer the Land or the relevant part of it for nil consideration to himself or his nominee;
- b) the Academy Trust must pay the Debt or the Market Value; and/or
- c) the Academy Trust must sell the Land or the relevant part of it, keeping some or all of the sale proceeds to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, and accounting to the Secretary of State for any proceeds not so used.

#### **Sharing the Land**

4.K If:

- a) the Academy does not reach its planned capacity, as stated in clause 2.B, within [●] Academy Financial Years; or
- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 5.A; or
- c) the Secretary of State considers that not all the Land is needed for the operation of the Academy at planned capacity,

then:

- i. the Academy Trust must share occupation of the Land with such other Academy as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose; or
- ii. the Academy Trust must sell part of the Land as required by the Secretary of State and account for the sale proceeds to the Secretary of State in part payment of the Debt, after which the Secretary of State will carry out the Discharge Process over the part of the Land that has been sold.

### **Exercise of Rights**

4.L On termination of this Agreement, the Secretary of State may give notice that he intends to exercise his rights under clauses 4.G, 5.DD or 5.EE or under the Legal Charge. Any such notice must state which clause of this Agreement the Secretary of State intends to exercise, and is without prejudice to his right to exercise any other rights available to him.

4.M If the Secretary of State exercises the Option on termination of this Agreement, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State;
- b) the Academy Trust will be deemed to have paid to the Secretary of State a proportion of the proceeds from the sale of the Land under clause 5.DD(b); and
- c) the Secretary of State will carry out the Discharge Process;

4.N If the Secretary of State enforces the Legal Charge on the termination of this Agreement, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State after the Debt has been realised by a receiver;

- b) the Academy Trust will be deemed to have paid to the Secretary of State a proportion of the proceeds from the sale of the Land as required under clause 4.29 of the Master Agreement; and
  - c) the Secretary of State will carry out the Discharge Process.
- 4.O If, on termination of this Agreement, the Secretary of State exercises his rights under clause 5.DD, then:
- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State; and
  - b) the Secretary of State will carry out the Discharge Process.
- 4.P If, on termination of this Agreement, the Secretary of State agrees under clause 5.EE that the Academy Trust may invest the proceeds from the sale of the Land for its charitable objects, or directs the Academy Trust to pay all or part of the sale proceeds to the relevant LA, then:
- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State; and
  - b) the Secretary of State will carry out the Discharge Process.
- 4.Q If the Academy Trust applies to the Secretary of State for consent to sell all or part of the Land, and if the Secretary of State agrees that the Land is no longer needed or cannot be used for the purposes of the Academy, he may:
- a) exercise the Option; or
  - b) consent to the sale subject to one or more of the following conditions:
    - i. that (notwithstanding clause 4.29 of the Master Agreement) the Academy Trust pays the Debt (or, if it proposes to sell only part of the Land, pays the Market Value of the part sold) to the Secretary of State;
    - ii. that pursuant to clause 4.29 of the Master Agreement, the Academy Trust keeps some or all of the sale proceeds for its

charitable purposes, accounting to the Secretary of State for the remainder; or

- iii. that pursuant to clause 4.30 of the Master Agreement, the Academy Trust pays all or some of the sale proceeds to the relevant LA and may reinvest all or some of the sale proceeds for its charitable purposes.

4.R If the Secretary of State consents to the sale of the Land, subject to any of the conditions in clause 4.Q(b):

- a) if the Secretary of State enforces the Legal Charge, then:
  - i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State after the Debt has been realised by a receiver;
  - ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.29 of the Master Agreement; and
  - iii. the Secretary of State will carry out the Discharge Process;
- b) if all of the Land is sold and the Secretary of State agrees that the Academy Trust may keep some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder, then:
  - i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State;
  - ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.29 of the Master Agreement; and
  - iii. the Secretary of State will carry out the Discharge Process;
- c) if part of the Land is sold, and the Secretary of State agrees that the Academy Trust may keep some or all of the sale proceeds for its

charitable purposes, accounting to the Secretary of State for the remainder, then:

- i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State to the extent of the Market Value;
  - ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State, as required under clause 4.29 of the Master Agreement, in relation to the relevant part of the Land; and
  - iii. the Secretary of State will carry out the Discharge Process in relation to the part of the Land which has been sold;
- d) if the Secretary of State directs the Academy Trust to pay some or all of the proceeds from the sale of the Land to the relevant LA under clause 4.30 of the Master Agreement, or agrees that the Academy Trust may reinvest the sale proceeds for its charitable purposes, the Secretary of State will carry out the Discharge Process in relation to the part of the Land which has been sold.

**4.S** If the Secretary of State exercises the Option over all of the Land and the Academy Trust transfers all of the Land to the Secretary of State for nil consideration, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State;
- b) the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.29 of the Master Agreement; and
- c) the Secretary of State will carry out the Discharge Process.

**4.T** If the Secretary of State exercises the Option over only part of the Land, and the Academy Trust transfers that part of the Land to the Secretary of State for nil consideration, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State to the extent of the Market Value;
- b) Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State, as required under clause 4.29 of the Master Agreement, in relation to the part of the Land transferred, and
- c) the Secretary of State will carry out the Discharge Process in relation to the part of the Land which has been transferred.

### **Payment of Debt**

4.U If the Academy Trust pays the Debt to the Secretary of State, the Secretary of State will carry out the Discharge Process.

4.V If the Academy Trust:

- a) sells some or all of the Land in accordance with clause 4.Q(b), or
- b) pays the Debt to the Secretary of State,

it will negotiate in good faith with the Secretary of State to agree a deed of variation for this Agreement.

## **5. TERMINATION**

### **Termination by either party**

5.A Either party may give at least seven Academy Financial Years' notice to terminate this Agreement. Such termination would take effect on 31 August of the relevant year.

### **Termination Warning Notice**

5.B The Secretary of State may serve a Termination Warning Notice where he considers that:

- a) the Academy Trust has breached the provisions of this Agreement or

the Master Agreement; or

- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or
- e) the Academy is Coasting provided he has notified the Academy Trust that it is Coasting.

5.C A Termination Warning Notice served under clause 5.B will specify:

- a) the action the Academy Trust must take;
- b) the date by which the action must be completed; and
- c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

5.D The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by which it must be completed.

5.E If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 5.C(c), or has not completed the action required in the Termination Warning Notice as specified under clauses 5.C(a) and (b) (and any further action specified under clause 5.D) he may serve a Termination Notice.

## **Termination by the Secretary of State after inspection**

5.F If the Chief Inspector gives notice to the Academy Trust that:

- a) special measures are required to be taken in relation to the Academy;  
or
- b) the Academy requires significant improvement

the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

5.G In deciding whether to give notice of his intention to terminate under clause 5.F, the Secretary of State will have due regard to the overall performance of the Academy Trust.

5.G.1 Not used.

5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F and:

- a) has not received any representations from the Academy Trust by the date specified in the notice; or
- b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

5.I Not used.

## **Termination by the Secretary of State**

5.J If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that determination is pending, he may serve a Termination Notice.

5.K Not used.

5.L If at any time after the Academy has opened, the Secretary of State considers



that the Academy is not financially viable because of low pupil numbers, then he may:

- a) serve a Termination Warning Notice; or
- b) serve a Termination Notice.

5.M If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.

5.N Not used.

5.O Not used.

#### **Funding and admission during notice period**

5.P If the Secretary of State serves a Termination Notice under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.

5.Q If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

#### **Notice of intention to terminate by Academy Trust**

5.R The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the "**Funding Allocation**").

5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the "**Critical Year**") and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other

academies operated by the Academy Trust ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement on 31 August before the Critical Year.

5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:

- a) the grounds upon which the Academy Trust's opinion is based, including:
  - i. evidence of those grounds;
  - ii. any professional accounting advice the Academy Trust has received;
  - iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and
- b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and
- c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

- 5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.
- 5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”).
- 5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert’s fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist’s fees will be borne equally between the parties.
- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before the Critical Year. Any such notice will be given within 21 days after (a) the Expert’s determination

will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

### **Effect of termination**

- 5.Z If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.
- 5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.
- 5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 5.AA, may include:
- a) staff compensation and redundancy payments;
  - b) compensation payments in respect of broken contracts;
  - c) expenses of disposing of assets or adapting them for other purposes;
  - d) legal and other professional fees; and
  - e) dissolution expenses.
- 5.DD If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:
- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a

nominee of the Secretary of State to use for educational purposes; or

- b) if the Secretary of State directs that a transfer under clause 5.DD(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

5.EE The Secretary of State may:

- a) Waive all or part of the repayment due under sub-clause 5.DD(b) if the Academy Trust obtains his permission to invest the sale proceeds for its charitable purposes; or
- b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

## **6. OTHER CONTRACTUAL ARRANGEMENTS**

### **Annexes**

6.A Any annexes to this Agreement form part of and are incorporated into this Agreement.

### **The Master Agreement**

6.B Except as expressly provided in this Agreement, all provisions of the Master Agreement have full force and effect.

### **General**

6.C The Academy Trust cannot assign this Agreement.

6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.

- 6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.
- 6.H Not used.

## **ANNEXES**

### **7. ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS**

“EHC plan” means an Education, Health and Care plan made under section 37 of the Children and Families Act 2014.

7.A Except as set out in clause 8 below, the Children and Families Act 2014 imposes duties directly on academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an academy trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State’s determination as to whether the LA acted unreasonably will be final, subject to any right of appeal which a parent of the pupil may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

### **8. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS**

(Clauses 8.A-8.G only apply where the pupil has a statement of special educational needs (SEN) rather than an EHC plan and where they therefore continue to be subject to the relevant provisions of the Education Act 1996. EHC plans are replacing Statements of SEN but although all Statements of SEN should have been converted to an EHC plan by the 1 April 2018 this clause is retained to protect pupils who still have a statement of special education need after this date. The detail on the drafting of a statement below is retained to protect pupils in exceptional circumstances.)

“Statement of SEN” means a statement made under section 324 of the Education Act 1996.

8.A The Academy Trust must admit all children with a Statement of SEN naming the Academy.

- 8.B** The Academy Trust must have regard to the Special Educational Needs Code of Practice 2001 when dealing with Statements of SEN.
- 8.C** Where the LA sends the Academy Trust a draft statement with a proposal that the Academy is named in the final statement, the Academy Trust must respond within 15 working days unless the time period falls within a school holiday that is longer than two weeks in which case the Academy Trust should respond within 15 working days of the end of the school holiday.
- 8.D** In its response the Academy Trust must either:
- a. consent to being named in the final statement or
  - b. explain why it believes that admitting the child would be incompatible with the provision of efficient education for other children and the efficient use of resources, including why no reasonable steps could secure compatibility. In doing so the Academy Trust must have regard to the relevant legislation and Code of Practice. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's Statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA. The final decision as to whether to name the Academy falls to the LA.
- 8.E** If the Academy Trust considers that the LA should not have named the Academy in the Statement of SEN, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.
- 8.F** If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber, either for or against the naming of



the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.

8.G Where it has been finally determined that the Academy be named in a child's Statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.

Clauses 8.A to 8.G only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.

