

**NOADSWOOD SCHOOL**

**DEED OF VARIATION OF FUNDING AGREEMENT  
29 APRIL 2021**

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**");

- and -

(2) **Noadswood School**, a charitable company incorporated in England and Wales with registered company number 07693860 whose registered address is at Noadswood School North Road, Dibden Purlieu, Southampton, Hampshire, SO45 4ZF (the "**Company**").

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

## **INTRODUCTION**

- A. The Parties have entered into a funding agreement on 1 August 2011, a copy of which is contained in Schedule 1, (the "**Existing Funding Agreement**").
- B. The Parties have agreed to amend and re-state the terms of the Existing Funding Agreement on the terms set out in this Deed.

## **LEGAL AGREEMENT**

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 New Funding Agreement (as defined in clause 2 below).
2. The Secretary of State and the Company agree that with effect from the date of this Deed, the Existing Funding Agreement shall be amended and re-stated in the form of the Funding Agreement as set out in Schedule 2 ("New Funding Agreement").

## **GOVERNING LAW AND JURISDICTION**

3. This Deed, and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
4. 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).

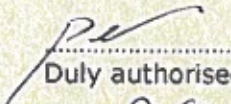
## **COUNTERPARTS**

5. 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 last date listed below.

**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  
Date 29-4-2021



**EXECUTED** as a deed by  
**Noadswood School** acting  
by:

  
.....  
Director

Print name CATHERINE LANGDON

Date.....

Witnessed by   
.....  
Signature

Full name PETER LANGDON

Address 18 ROWAN WAY, S045 4RP

Occupation UNI PROF

**Schedule 1**



**Schedule 1**

**Existing Funding Agreement**

SINGLE ACADEMY MODEL

ROADSWOOD SCHOOL

MODEL FUNDING AGREEMENT

1 August 2011

# SINGLE ACADEMY MODEL

## NOADSWOOD SCHOOL

### ACADEMY

#### FUNDING AGREEMENT

##### CONTENTS:

<b>SECTION</b>	<b>CLAUSE NO</b>
<b>INTRODUCTION</b>	1 – 8
<b>LEGAL AGREEMENT</b>	9
<b>CHARACTERISTICS OF THE ACADEMY</b>	10
<b>ACADEMY OPENING DATE</b>	11
<b>CONDITIONS OF GRANT</b>	
General	12
Governance	13 – 14
Conduct	15
Criminal Records Bureau Checks	16
Pupils	17
Designated Teacher for Looked after Children	17A
Teachers and other staff	18 – 21
Curriculum, curriculum development and delivery and RE and collective worship	22-28
Assessment	29
Exclusions	30
School meals	31 – 32
Charging	33
<b>GRANTS TO BE PAID BY THE SECRETARY OF STATE</b>	
General	34 – 35
Capital Grant	36 – 39
Arrangements for Payment of Capital Grant	40
Implementation Grant	41 – 46
General Annual Grant	47 – 59
Earmarked Annual Grant	60 – 61
Arrangements for payment of GAG and EAG	62 – 66
Other relevant funding	67 – 70
<b>FINANCIAL AND ACCOUNTING REQUIREMENTS</b>	
General	71 – 85
Borrowing Powers	86 – 87
Disposal of Assets	88 – 94

**TERMINATION**

General	95 – 108
Effect of Termination	109 – 116

**GENERAL**

Information	117 – 118
Access by Secretary of State's Officers	119 – 121
Notices	122 – 123
General	124

**ANNEXES TO AGREEMENT**

Memorandum and Articles of the Academy Trust	Annex A
Admissions Requirements	Annex B
Arrangements for pupils with SEN and disabilities at each Academy	Annex C
Serious incidents of misbehaviour leading to fixed period or permanent exclusion	Annex D

## 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 Noadswood School (the "Academy Trust").
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 07693860.
- 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" - clause 72;
  - b) "Academy Financial Year" - clause 62;
  - c) "Accounting Officer" – clause 71;
  - d) "Annual Letter of Funding" - clause 65;
  - e) "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
  - f) "GAG" – clause 35;
  - g) "Capital Expenditure" - clause 36;
  - h) "Capital Grant" – clause 36;
  - i) "EAG" - clause 35;
  - j) "Recurrent Expenditure" – clause 35;
  - k) "Start-up Period" – clause 55;
- 4) In this Agreement the following words and expressions shall have the following meanings:-

"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;



"DfE" means Department for Education;

"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;

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

"Head" means the head teacher of the Academy;

"Principal Regulator" means the body or person appointed as the Principal Regulator under the Charities Act 2006.

"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 Noadswood School, North Road, Dibden Purlieu, Southampton, Hampshire, SO45 4ZF and being part of the land registered under Land Registry title numbers HP9165 and HP41527";

"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;

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

"SEN" means Special Educational Needs;

- 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 Noadswood School ("the Academy") and having such characteristics 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.

#### **CHARACTERISTICS OF THE ACADEMY**

10) The characteristics of the Academy set down in Section 1(6) of the Academies Act 2010, are that:

(a) the school has a curriculum satisfying the requirements of section 78 of EA 2002 (balanced and broadly based curriculum)

(b) if the school provides secondary education, its curriculum for the secondary education has an emphasis on a particular subject area, or particular subject areas, specified in the Agreement;

(c) the school provides education for pupils of different abilities<sup>1</sup>

(d) the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated.

---

<sup>1</sup> Delete if the Academy is a "selective school" within meaning of Section 6(4) of the Academies Act 2010.

## **ACADEMY OPENING DATE**

11) The Academy shall open as a school on 1 August 2011 replacing Noadswood School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

## **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 external 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;
- (d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Academy Trust save that when entering into a contract of employment with any person the Academy Trust shall be bound by and act in accordance with such guidance as the Secretary of State may publish in relation to the maximum salary that may be paid to employees of Academies;
- (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;
- (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;
- (g) the Academy Trust shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

### **Governance**

13) The Academy will be governed by a governing body ("the Governing Body") who are the Directors of the company constituted under the Memorandum and 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 Memorandum and 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 shall comply with the requirements of Part 4 of Schedule 1 to the Education (Independent School Standards) (England) Regulations 2010 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.

### **Pupils**

17) The planned capacity of the Academy is 1125 in the age range 11 to 16. The Academy will be an all ability inclusive<sup>2</sup> 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 Annex D to this Agreement.

### **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

---

<sup>2</sup> Delete words in square brackets if the Academy is a "selective school" within meaning of Section 6(4) of the Academies Act 2010.

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 an 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 not employ anyone 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 ("specified work") who is not either:-

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
- b) otherwise eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663), which for the purpose of this clause shall be construed as if the Academy were a maintained school.

19) Clause 18 does not apply to anyone who:

- a) was transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- b) immediately prior to the transfer, was employed to do specified work; and
- c) immediately prior to the transfer, was not:
  - (i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the appropriate body, or
  - (ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663)

("transferred staff member"). The Academy Trust shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of clause 18(a) or clause 18(b) meets such requirements as soon as possible.

- 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 have access to the Local Government Pension Scheme.

**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 with an emphasis in its secondary curriculum on Sports.<sup>3</sup>
- 23) The Academy Trust shall ensure that the broad and balanced curriculum includes English, Mathematics and Science.
- 24) The Academy Trust shall make provision for the teaching of religious education and for a daily act of collective worship at the Academy.
- 25) Where the Academy is designated with a religious character<sup>4</sup> 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) subject to clause 27, the Academy Trust shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
  - b) subject to clause 27, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
  - c) the Academy Trust shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Academy Trust and the Academy shall secure that such inspection shall

---

<sup>3</sup> Insert specialism if the school provides secondary education

<sup>4</sup> Alternative provisions are available and would be potentially appropriate for non-denominational faith schools.



comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation of voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

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 or further to Section 6(8) of the Academies Act 2010:

- 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, foundation or voluntary 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.

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 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.

#### **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 pupil's 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 prescribe 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 prescribed by the Secretary of State.
- d) The Academy Trust may not offer courses at the Academy which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives specific approval for such courses.

#### **Exclusions Agreement**

30) The Academy Trust shall, if invited to do so by an 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 2008.

#### **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 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 education 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.

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

#### **General**

- 34) The Secretary of State shall pay grants towards capital and Recurrent Expenditure for the Academy. 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 amount of grant.

- 35) "Recurrent Expenditure" means any expenditure on the establishment, conduct,

administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 36. The Secretary of State shall pay two separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

### 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;
- 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;
- 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, 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 fulfillment 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.

#### **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. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 39 are complied with. 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.

#### **Implementation Grant<sup>5</sup>**

41) "Implementation Grant" means payments towards Recurrent Expenditure incurred for the establishment of the Academy prior to its opening.

42) The Secretary of State may enter into an agreement with a third party ("Project Management Company") for the provision of project management services to assist in the establishment of the Academy. Where such an agreement has been entered into,

---

<sup>5</sup> Note that the Secretary of State will not pay Implementation Grant pursuant to these clauses in relation to schools applying to convert further to the Academies Act 2010.

the Secretary of State shall pay Implementation Grant to the Project Management Company in accordance with that agreement.

- 43) If the Secretary of State has indicated that Implementation Grant will be payable, the Academy Trust shall prepare and submit to the Secretary of State a budget showing expected Recurrent Expenditure to be incurred by the Academy Trust before the Academy opens and for which grant is sought. This budget must either be agreed to or modified by the Secretary of State as he considers appropriate ("Approved Implementation Budget").
- 44) Both parties recognise that as the project develops it may be necessary to revise individual costs in the Approved Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Academy Trust wishes to make such an adjustment of over £10,000, the reason for the change and a revised budget must be submitted to the Secretary of State for approval.
- 45) The Secretary of State will pay Implementation Grant to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in accordance with the Approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable, the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith.
- 46) Any amount in the Approved Implementation Budget in respect of which the expenditure has not been incurred by the Academy Trust by the date on which the Academy opens will lapse and no Implementation Grant will be payable in respect of that part of the Approved Implementation Budget. Any amount of Implementation Grant which has been paid but remains unexpended on relevant expenditure by the date on which the Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust after the Academy has opened. Any amount of Implementation Grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust.



## General Annual Grant

47) 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;
- 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.

48) Subject to clauses 56-57, GAG for each Academy Financial Year for the Academy will be the total of the following areas of funding;

- a) Formula Funding: Funding equivalent to the level of funding which would be provided

through the funding formula of the LA to a maintained school which had all of that Academy's relevant characteristics, including its number of pupils;

- b) Local Authority Central Spend Equivalent: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Budget and the relevant items in the LA Budget, if the Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 251 Budget Return which are relevant to that Academy.
- c) Specialist Schools Allowance: Funding equivalent to that which a maintained school with the Academy's characteristics would receive in respect of their participation in the specialist schools programme. In the year of conversion, this may continue to be paid by the Local Authority;

49) The GAG for each Academy Financial Year for the Academy will also include, payable on a basis equivalent to that applied to maintained schools:

- a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- b) payments in respect of 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.

50) Subject to clause 51, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for the Academy will be, in the first year of conversion, the same basis as that used by the Local Authority for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State. In subsequent years the basis of the pupil count will be as determined by the Secretary of State.

51) Once the conditions specified in clause 52 have been satisfied with respect to the Academy for the Academy Financial 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 January preceding the Academy Financial 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.

52) For the purpose of clause 51, the conditions are:

- a) 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); and
- b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, which is 1125
- c) The Secretary of State has determined that the basis shall be as provided for in Clause 51.

53) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 50, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG to recognise variation from the pupil count basis used.

54) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 51, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula 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.

55) The Secretary of State recognises that:

- a) Where the Academy opens with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State may pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 48-54, in order to enable the Academy to operate effectively;<sup>6</sup>
- b) Where the Academy opens with pupils transferred from one or more maintained

---

<sup>6</sup> Note that a larger GAG for the Start-Up Period is not applicable to schools applying to convert further to the Academies Act 2010.

schools which have closed, additional GAG resources may be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum. If the Secretary of State has indicated that such additional GAG will be payable, the Academy Trust will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

56) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 48-54 to allow the Academy to:

- a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials;
- b) meet the costs associated with the recruitment and induction of additional teaching and other staff.

After the Start-up Period these costs will be met through the ordinary GAG.

57) 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. The Secretary of State undertakes 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 48-54, in order to enable the Academy to operate effectively.

58) 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.

59) 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**

60) 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.

61) Where the Academy Trust is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

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

62) The Secretary of State shall notify the Academy Trust at a date preceding the start of each Academy Financial 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 Financial Year and of the assumptions and figures on which these are based.

63) 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 Financial 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 Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

64) 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 Financial 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 Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

65) The amounts of GAG for an Academy Financial 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 not later than 1 April preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding 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 as soon as practicable thereafter.

66) For the purposes of this Agreement, an Academy Financial Year shall be deemed to run from September to August, in order to align it to the school academic year. 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.

#### **Other relevant funding**

67) Not used.<sup>7</sup>

68) The Secretary of State may meet costs incurred by the Academy Trust in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Academy Trust shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.

---

<sup>7</sup> For "converter" Academies, include words "Not used".

If the project is a Sponsored Academy then insert, in place of "Not used", the following provision:  
"The Secretary of State shall meet a proportion of the Academy Trust's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employees' prior eligible service, being service prior to the opening of the Academy, and the Academy Trust will meet the costs of service after the opening of the Academy. The Academy Trust shall seek the Secretary of State's consent for these redundancies, such consent not to be unreasonably withheld, before committing to the redundancies."



69) The Academy Trust may also receive funding from an 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.

70) The Academy Trust may also receive grant funding for the Academy from the LA's Standards Fund. The extent of any grant funding received by the Academy Trust from the Local Authority may be equivalent to that which a Local Authority would pay to a maintained school using grant monies paid to it by the Secretary of State. Grants paid to the Academy Trust from the Standards Fund are not paid under this Agreement.

### **Financial and Accounting Requirements**

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

72) 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, 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 its being a charity.

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

74) 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 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 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 any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated.

75) 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.

76) 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 times to officials 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.

77) 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 Financial 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 Financial 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 Financial Year;
- c) a statement of proposed capital expenditure for that Academy Financial Year.

78) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to 12% of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:

- a) equivalent to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Academy Trust for any of the purposes for which GAG is paid;
- b) equivalent to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the Academy, and on capital expenditure relating to the Academy.

79) Notwithstanding clause 78, any additional grant provided over and above that set out in clauses 48-54, and made in accordance with clauses 55-57 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 57 come to an end.

80) Any savings of GAG not allowed to be carried forward under clauses 78-79 will be taken into account in the payment of subsequent grant.

81) The Academy Trust may also 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. 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.

82) 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) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
- b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
- c) make any sale or purchase of freehold property; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

82A) Grants paid by the Secretary of State shall only be used by the Academy Trust for purposes listed in Article 4(a) of the Articles. Such funds shall not be used by the Academy Trust for purposes listed in Article 4(b) of the Articles without the prior written consent of the Secretary of State except where the use of such funds for a charitable purpose set out in Article 4(b) is merely incidental to their use for the purposes set out in Article 4(a) of the Articles.

83) 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 freehold property; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

84) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Academy Trust to the Secretary of State at the earliest opportunity.

85) 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) 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.

### **Borrowing Powers**

- 86) 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 may only be granted in limited circumstances. 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, shall require approval by the Academy Trust in 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.
- 87) 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 86 above.

### **Disposal of Assets**

- 88) 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 an LA, the value of which assets shall be disregarded.
- 89) 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 £20,000 for the asset; or
  - b) the asset was transferred to the Academy Trust from an LA for no or nominal consideration.

90) 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 £1,000,000 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.

91) 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.

92) 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.

93) 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.

94) 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 93 above.

## **TERMINATION**

95) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2018 or any subsequent anniversary of that date.



96) If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 10 of this Agreement or that the conditions and requirements set out in clauses 12-33 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 provisional intention to terminate this Agreement.

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

- a) state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 10 of this Agreement or is not meeting the conditions and requirements of clauses 12-33 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.

98) If no response is received by the date specified in accordance with clause 97(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.

99) If a response is received by the date specified in accordance with clause 97(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.

100) In the circumstances of clause 99(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 thirty days from such notification, he shall meet a deputation including representatives from 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 have the characteristics set out in clause 10 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 12-33 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 twelve months written notice to terminate this Agreement.

101) 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 100 may be shortened to a period deemed appropriate by the Secretary of State.

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

- a) the Chief Inspector gives 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 carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes 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 shall have 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.

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

- a) by notice in writing to the Academy Trust terminate this Agreement forthwith; 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.

104) In the event that the Secretary of State appoints Further Governors in accordance

with clause 103(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.

105) 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 1993 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.

106) 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.

107) 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.

- 108) The Secretary of State's right to terminate this Agreement under clause 107 shall cease if he removes any of the Additional Governors or Further Governors which he has appointed pursuant to the Articles of Association.

### **Effect of Termination**

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

- 110) In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 1 of the Academies Act 2010.

- 111) Subject to clause 112, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, that the Academy no longer has the characteristics set out in clause 10 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 12-33 of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.

- 112) 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.

- 113) 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 shall 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.

- 114) Subject to clause 115, 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 educational 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 114(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.

115) The Secretary of State may waive in whole or in part the repayment due under clause 114(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.

116) If any land or premises of the Academy were acquired by the Academy Trust from an LA by a scheme under Paragraph 1 of Schedule 1 of the Academies Act 2010 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Paragraph 6 of Schedule 1 of the Academies Act 2010, the Academy Trust may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Academy Trust and the LA from which the land was transferred before giving or withholding that consent.

## **GENERAL**

### **Information**

117) 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; and
  - l) membership and proceedings of the Governing Body.
- 118) 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.

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

- 119) The Academy Trust shall allow access to the premises of the Academy at any reasonable time to DfE officials. 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.
- 120) The Academy Trust shall ensure that:
- a) the agenda for every meeting of the Governing Body;
  - 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, if requested.

121) 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 120, 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.

### **Notices**

122) 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 Secretary of State to Head of Academies Division, 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.

123) 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**

124) 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.

1 August  
17th July

This Agreement was executed as a Deed on  
Executed on behalf of the Academy Trust by:

2011

[Either

Michael Roberts  
Director

In the presence of:

Witness R. H. Storey

Address 57 WHITTINGTON CLOSE, HYTHE, SOUTHAMPTON, SO45 5EZ

Occupation SCHOOL ADMIN MGR.

[Or

.....  
Director

.....]  
Director/Secretary

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

[Signature]

Duly Authorised





**Schedule 2**

**New Funding Agreement**



Department  
for Education

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

**December 2020 v8**

## **Contents**

SUMMARY	5
<b>1. ESTABLISHING THE ACADEMY</b>	<b>9</b>
<b>Introduction to this agreement</b>	9
<b>General Obligations of the Academy Trust</b>	12
<b>Academy opening date</b>	14
<b>Governance</b>	14
<b>2. RUNNING OF THE ACADEMY</b>	<b>15</b>
<b>Length of school day and year</b>	15
<b>Teachers and staff</b>	15
<b>Pupils</b>	17
<b>School meals</b>	18
<b>Pupil Premium</b>	19
<b>Charging</b>	19
<b>Admissions</b>	20
<b>Exclusions</b>	24
<b>Curriculum</b>	24
<b>Assessment</b>	29
<b>3. GRANT FUNDING</b>	<b>31</b>
<b>Recurrent Expenditure grants</b>	31
<b>Capital Grant</b>	31
<b>General Annual Grant (GAG)</b>	33
<b>Calculation of GAG</b>	35
<b>Earmarked Annual Grant (EAG)</b>	38

<b>Arrangements for paying GAG and EAG</b>	38
<b>Other relevant funding</b>	39
<b>4.FINANCIAL AND ACCOUNTING REQUIREMENTS</b>	40
<b>General</b>	40
<b>Application of the Academies Financial Handbook</b>	41
<b>Budgeting for funds</b>	42
<b>Carrying forward of funds</b>	43
<b>Annual accounts and audit</b>	44
<b>Keeping financial records</b>	44
<b>Access to financial records</b>	45
<b>Acquiring and disposing of Publicly Funded Assets</b>	45
<b>Retaining proceeds from the disposal of capital assets</b>	46
<b>Transactions outside the usual planned range</b>	46
<b>Borrowing</b>	47
<b>5.LAND CLAUSES</b>	47
<i>Version 2: to be used if, before conversion, the local authority (or another third party) holds the freehold and is to grant, on conversion, a lease to the academy trust.</i>	53
<b>6.COMPLAINTS</b>	83
<b>7.TERMINATION</b>	84
<b>Termination by either party</b>	84
<b>Termination Warning Notice</b>	84
<b>Termination by the Secretary of State after inspection</b>	85
<b>Termination by the Secretary of State</b>	87
<b>Change of Control</b>	91

<b>Funding and admission during notice period</b>	92
<b>Effect of Termination</b>	92
<b>8.OTHER CONTRACTUAL ARRANGEMENTS</b>	93
<b>Information</b>	93
<b>Access by the Secretary of State's Officers</b>	94
<b>Information Sharing with Local Authorities – Statutory Responsibilities</b>	95
<b>Notices</b>	95
<b>General provisions</b>	96
<b>ANNEXES</b>	99
<b>9.ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS</b>	99

## SUMMARY

### Information about the Academy:

<b>Name of Academy Trust</b>	Noadswood School
<b>Company number</b>	07693860
<b>Name of academy</b>	Noadswood School
<b>Opening date</b>	1 August 2011
<b>Type of academy (indicate whether academy or free school)</b>	Mainstream
<b>Religious designation</b>	N/A
<b>Wholly or partly selective</b>	N/A
<b>Name of predecessor school (where applicable)</b>	Noadswood School
<b>Capacity (of statutory school age places) (if the Academy has a nursery provision, please provide a breakdown of capacity for nursery pupils and statutory school aged places)</b>	1125
<b>Age range (including nursery provision where the nursery is part of the school)</b>	11-16
<b>Number of sixth form places</b>	N/A
<b>Number of boarding places</b>	N/A
<b>SEN unit / Resource provision</b>	5 places for Physical Disability
<b>Land arrangements (Version 1-8 or other)</b>	Version 2
<b>Address and title number of Land (and Temporary Site)</b>	North Road, Dibden Purlieu, Southampton, Hampshire, SO45 4ZF Title Number: HP742838

<b>Contact details for the Chair of Board of Charity Trustees</b>	Chair of Board North Road, Dibden Purlieu, Southampton, Hampshire, SO45 4ZF
---	---

**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>
1.19	Only applies to free schools and new provision academies		x
2.9A	Clause applies where an academy was previously a VC or foundation school designated with a religious character		x
2.12, 2.13	Only applies where the academy has an SEN unit or Resourced Provision	x	
2.21.1	Only applies to Free schools with nursery provision		x
2.23	Only applies where there was a predecessor independent school		x
2.24	Only applies where the academy provides boarding		x
2.26	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
2.32	Clause applies only to academies and free schools designated with a religious character		X
2.33	Clause applies only to academies that were formerly wholly selective grammar schools		X
2.34	Clause applies only to academies that were formerly partially selective grammar schools		X
2.39	Clause applies to free schools and new provision academies designated with a religious character		X
2.50	Clause only applies where the academy is designated with a religious character but was not previously a Voluntary Controlled (VC) school or foundation school designated with a religious character (in which case use clause 2.52 instead).		X

Clause No	Descriptor	Applied	Not used
	Also use 2.50 where an academy was previously a VC school but has gone through a significant change process to adopt VA characteristics in parallel with converting to an academy.		
2.51	Clause only applies where the academy has not been designated with a religious character	X	
2.52	Clause only applies where an academy was previously a VC school or foundation school designated with a religious character and should be used instead of clause 2.50. Where an academy was previously a VC school has gone through a significant change process to adopt VA characteristics in parallel with converting to an academy, use clause 2.50 instead.		X
2.52c)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than ‘Christian’		X
3.16 – 3.21	Option 1 applies to converter and sponsored academies: if used delete option 2	X	
3.16.1	Only applies to Free schools with nursery provision		X
3.16 – 3.21	Option 2 applies to free schools and new provision academies: if used delete option 1		X
3.23	Clause does not apply to academy converters		X
3.33	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.34	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		X
4.5	Clause applies where the academy has 16-19 provision		X
4.5A	Clause only applies to free schools		X
4.11	Clause to be included where relevant circumstances apply – and only in relation to academy converters		X



Clause No	Descriptor	Applied	Not used
4.16	Clause only applies where a Start-Up period applies to the academy		X
6.1 – 6.4	Clauses do not apply to free schools and new provision academies	X	
7.6A	Clause applies only to a boarding academy/free school		X
7.8	Clause only applies to sponsored academies		X
7.15	Clause applies to free schools and may be applied to new provision academies		X
7.16	Clause applies to free schools and may be applied to new provision academies		X
7.17	Clause applies to free schools and may be applied to new provision academies		X
7.18	Clause applies to free schools and may be applied to new provision academies		X
7.19	Clause applies to free schools and may be applied to new provision academies		X
8.12	Clause only applies to schools which are designated with a Church of England or Roman Catholic character		X

**Please confirm whether additional clauses have been included (e.g. PFI clauses which will be supplied by your project lead if needed)**

Descriptor	Clause No.	Applied	Not used

# 1 ESTABLISHING THE ACADEMY

## Introduction to this agreement

- 1.1. This Agreement is between the Secretary of State for Education (the “**Secretary of State**”) and Noadswood School (the “**Academy Trust**”), and is an academy agreement as defined by section 1 of the Academies Act 2010.
- 1.2. The Academy Trust is a company limited by guarantee incorporated in England and Wales with company number 07693860. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.
- 1.3. In order for the Academy Trust to establish and run an independent school in England, according to the provisions of the Academies Act 2010, to be known as Noadswood School (the “**Academy**”), and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the requirements in this Agreement.
- 1.4. In this Agreement these capitalised words and expressions will have the following meanings:

“**Academies Financial Handbook**” means the document with that title published by the ESFA and amended from time to time, on behalf of the Secretary of State.

“**Academy Financial Year**” means the year from 1 September to 31 August, or a different period notified in writing by the Secretary of State.

“**Articles**” means the Academy Trust’s articles of association.

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

“**Charity Trustees**” means the directors of the Academy Trust, who are responsible for the general control and management of the administration of the Academy Trust.

“**Chief Inspector**” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills.

“**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.

“**Control**” means the power of an organisation or individual (‘A’) to ensure that the affairs of another organisation are conducted in accordance with A’s wishes, whether through share ownership or voting power, by agreement, because of powers conferred by articles of association or any other document, or otherwise; and “**Controls**” will be construed accordingly.

“**DfE**” and the expression “**Department**” means the Department for Education or any successor Department which has responsibility for schools”

“**ESFA**” means the Education and Skills Funding Agency.

“**Funded Hours**” means the current applicable government funded entitlement to free childcare.

“**Guidance**” means guidance issued by or on behalf of the Secretary of State, as amended from time to time.

“**Independent School Standards**” means the independent school standards prescribed under section 157 of the Education Act 2002.

“**LA**” means a local authority.

“**Parents**” means parents<sup>1</sup> or guardians.

“**Predecessor School**” means the school which the Academy has replaced, where applicable.

“**Publicly Funded Assets**” means (a) assets or property funded wholly or partly using payments made by or on behalf of the Secretary of State, and (b) publicly funded land as defined in paragraph 22(3) of Schedule 1 to the Academies Act 2010.

“**Pupil Premium**” means an amount equivalent to the pupil premium as defined in the School and Early Years Finance (England) Regulations 2013.

---

<sup>1</sup> Parent has the meaning set out in section 576 of the Education Act 1996

Any reference to “**Secretary of State**” includes a reference to the ESFA acting on the Secretary of State’s behalf.

“**Secretary of State’s consent**” means the Secretary of State’s specific, prior written consent, which will not be unreasonably withheld or delayed.

“**SEN**” means special educational needs and has the meaning set out in sections 20(1) of the Children and Families Act 2014.

“**Teaching Staff**” means teachers and the principal or head teacher employed at the Academy.

“**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.

- 1.5. The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.
- 1.6. A reference in this Agreement to any party or body includes its successors.
- 1.7. Any words following the terms ‘include’, ‘including’ or ‘in particular’ are by way of illustration, not limitation.
- 1.8. A reference in this Agreement to land includes any buildings or structures on the land.
- 1.9. References to this Agreement include any and all annexes.
- 1.10. Where any legislation, legal requirement or published guidance is referred to, unless otherwise stated, the following terms should be interpreted as follows:
  - a) the “school” refers to the Academy;
  - b) the “head teacher” may refer to the Academy’s head teacher or principal;
  - c) the Academy Trust will be deemed to be the “responsible authorities”;  
and

- d) references to registered pupils will be treated as references to registered pupils at the Academy.

1.11. References in this Agreement to any named legislation, legal requirement or published guidance, should be taken to include any amendment to or replacement of it.

1.12. If any questions arise about how this Agreement should be interpreted, the answer will be decided by the Secretary of State, after discussion with the Academy Trust.

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

1.13. The Academy Trust must ensure that the Academy meets the requirements in section 1A of the Academies Act 2010.

1.14. To the extent that it is compatible with the Academy Trust fulfilling its charitable purpose of advancing education in the United Kingdom for the public benefit, the Academy Trust must ensure that the Academy is at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community.

1.15. The Academy Trust must conduct the Academy within the terms and requirements of:

- a) the Articles;
- b) any legislation or legal requirement that applies to academies, including the Independent School Standards and legislation about meeting the needs of pupils with SEN and disabilities;
- c) the Academies Financial Handbook, as stated in clauses 4.6–4.8; and
- d) this Agreement.

1.16. The Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for receiving and managing donations for the purpose of its aims as specified in the Articles.

- 1.17. The Academy Trust must obtain the Secretary of State's consent before applying for the Academy to be designated as a school with religious character. The Secretary of State may at his discretion refuse or consent to the Academy Trust making such an application.
- 1.18. Unless an Academy operated by the Academy Trust is designated as a school with a religious character under the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003, it agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.
- 1.19. Not used.
- 1.20. The Academy Trust is not required to publish information under this Agreement if to do so would breach its obligations under data protection legislation.

### **Academy opening date**

- 1.21. The Academy Trust opened the Academy on 1 August 2011.

### **Governance**

- 1.22. The Academy will be governed by a board comprising the Charity Trustees of the Academy Trust (the "**Board of Charity Trustees**").
- 1.23. The Board of Charity Trustees must have regard to any Guidance on the governance of Academy Trusts.
- 1.24. The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.
- 1.25. The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

- 1.26. The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members (“the Governance Articles”) without the Secretary of State’s consent.
- 1.27. Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:-
- a) the proposed amendment or removal; and
  - b) the reason for it.
- 1.28. If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

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

### **Length of school day and year**

- 2.1. The length of the school day and year is the responsibility of the Academy Trust.

### **Teachers and staff**

- 2.2. In complying with the Independent School Standards, the Academy Trust must require enhanced Disclosure and Barring Service (“**DBS**”) certificates as appropriate for members of staff, supply staff, members of the Academy Trust, individual Charity Trustees and the chair of the Board of Charity Trustees.
- 2.3. The Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.
- 2.4. Subject to clause 2.5 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.

- 2.5. 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 a la, or are no longer looked after by a 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.
- 2.6. Teachers' pay and conditions of service are the responsibility of the Academy Trust.
- 2.7. The Academy Trust has a statutory duty to ensure that all teachers employed at the Academy have access to the Teachers' Pension Scheme (TPS) and, in so doing, must comply with the TPS Regulations. That includes ensuring that only staff who predominantly carry out teaching work are enrolled in the TPS – teaching work is 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. The board will need to give careful consideration as to whether or not executive leaders meet the TPS eligibility requirements. Details of the full range of employer duties are on the [TP Employer Hub](#) .
  - 2.7.1.a. Access to the TPS must also be in accordance with HM Treasury's published guidance on New Fair Deal which sets out how pensions' issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers. The Academy Trust has a crucial role in the successful administration of the TPS and must comply with the requirements of the scheme administrator to provide accurate and timely information and also to provide pension contributions.



2.8. The Academy Trust must ensure that all affected staff employed by the Academy Trust other than teachers have access to the Local Government Pension Scheme and, in doing so, the Academy Trust must comply with the requirements of the scheme and with Fair Deal for staff pensions guidance published by HM Treasury. These requirements do not apply if an individual chooses to opt out in line with the relevant legal provisions.

2.9. Where a member of the Teaching Staff employed at the Academy applies for a teaching post at another Academy, a maintained school, or a further education institution, the Academy Trust must at the request of the board of governors or Academy Trust of that other educational institution:

- a) advise in writing whether or not, in the previous two years, there have been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;
- b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

2.9A The Academy Trust shall in relation to:

- a) any person who may apply for a position as an employee or to be otherwise engaged by the Academy Trust, and
- b) any employee with whom the Academy Trust enters into a contract of employment or a contract for services,

act in accordance with and hereby agrees to be bound by section 124AA of the School Standards and Framework Act 1998 ("SSFA"), so far as those provisions apply to, and as if the Academy Trust were, a voluntary controlled or foundation school designated by an order under section 69(3) of the SSFA as a school having a religious character. For the avoidance of doubt, the Academy Trust agrees and acknowledges that section 124A of the SSFA shall not therefore apply to it in relation to the persons referred to at (a) and (b) above.

## **Pupils**

- 2.10. The planned capacity of the Academy is 1125 and the age range is 11-16, which for the avoidance of doubt includes pupils with designated places pursuant to clause 2.12. For the avoidance of doubt, where the specified age range would be a child's normal age group, the Academy is not prevented from considering applications made by the child's parents under the relevant paragraph of the Schools Admissions Code ('Admission of children outside their normal age group'), to request that the child be admitted outside of their normal age group . The Academy will be an all ability inclusive single/mixed sex school.
- 2.11. The Academy Trust must ensure that the Academy meets the needs of individual pupils, including pupils with SEN and disabilities.

## **SEN unit or Resourced Provision**

- 2.12 The Academy must operate designated places reserved for pupils with SEN (SEN Unit or Resourced Provision) with up to 5 planned places for pupils with physical disability in the age range 11-16.
- 2.13 The Secretary of State may at any time determine that the SEN Unit or Resourced Provision should cease to operate. In making such a determination, the Secretary of State will:
- a) consider the views of the Academy and relevant LAs (in their strategic role in the commissioning of SEN provision); and
  - b) consider how his determination will affect the LAs' ability to secure suitable SEN provision for children and young people in the area.

## **School meals**

- 2.14. The Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by the local authority were to the Academy.

- 2.15. The Academy Trust must comply with school food standards legislation as if it were a maintained school.
- 2.16. Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

### **Pupil Premium**

- 2.17. For each Academy Financial Year the Academy Trust must publish, on the Academy's website, information about:
- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
  - b) what it intends to spend its Pupil Premium allocation on;
  - c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year; and
  - d) the impact of the previous year's Pupil Premium allocation on educational attainment.
- 2.18. For each Academy Financial Year the Academy Trust must, where applicable, publish, on the Academy's website, information about:
- a) the amount of year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
  - b) what it intends to spend its year 7 literacy and numeracy catch-up premium grant on;
  - c) what it spent its year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year; and
  - d) the impact of the previous year's year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

### **Charging**

- 2.19. The Academy Trust must comply with sections 402, 450-457 and 459-462 of the Education Act 1996 with regard to public examinations, charging, providing information, inviting voluntary contributions and recovering civil debts, as if the Academy were a maintained school.
- 2.20. There must be no charge for admission to or attendance at the Academy and the Academy will only charge pupils where the law allows maintained schools to charge.
- 2.21. Clause 2.20 does not prevent the Academy Trust receiving funds from a la or a charity in respect of the admission and attendance of a pupil with SEN to the Academy.
- 2.21.1.a. **[Not used]**
- 2.22. Notwithstanding clause 2.20, the Academy Trust may charge people who are not registered pupils at the Academy for education provided or use of facilities.
- 2.23. **[Not used]**
- 2.24. **[Not used]**

### **Admissions**

- 2.25. Subject to clauses 2.31 and 2.32 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 Department for Education (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.
- 2.26. Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

2.27. 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.

2.28. **[Not used]**

2.29. **[Not used]**

2.30. **[Not used]**

2.31. The Secretary of State may:

- a) direct the Academy Trust to admit a named pupil to the Academy:
  - i. following an application from a 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.

2.32. **[Not used]**

2.33. **[Not used]**

2.34. **[Not used]**

2.35. 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.

2.35.1.a. **[Not used]**

- 2.36. Subject to clause 2.37, 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.
- 2.37. 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.
- 2.38. 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.

2.39. **Not used.**

**Exclusions**

2.40. If asked to by a la, the Academy Trust must enter into an agreement with that LA that has the effect that where:

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

then the arrangements for payment will be the same as if the Academy were a maintained school, under regulations made under section 47 of the School Standards and Framework Act 1998.

## **Curriculum**

2.41. The curriculum is the responsibility of the Academy Trust.

2.42. The Academy Trust must ensure that the curriculum provided to pupils up to the age of 16 is balanced and broadly based, and includes English, mathematics, science and (subject to the provisions in clause 2.49) religious education.

2.43. The Academy Trust must publish on the Academy's website information about its curriculum, including:

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) where applicable, the names of any phonics or reading schemes in operation for Key Stage 1;
- d) where applicable, the GCSE options and other Key Stage 4 qualifications, or other future qualifications specified by the Secretary of State, offered by the Academy; and
- e) how parents (including parents of prospective pupils) can obtain more information about the Academy's curriculum.

- 2.44. The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Academy.
- 2.45. The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 2.46. 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.
- 2.47. The Academy Trust must ensure the Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.
- 2.47A The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.
- 2.48. The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.49. 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 2.51.
- 2.50. **[Not used]**
- 2.51. Subject to clause 2.49, 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 school or foundation school without 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.

**2.52. [Not used]**

2.53. The Academy Trust must comply with paragraph 2A of the Schedule to The Education (Independent School Standards) Regulations 2014 in relation to the provision of Relationships Education, Relationships and Sex Education and Health Education.

2.54. The Academy Trust must ensure that careers guidance is provided at the Academy, in accordance with the requirements on maintained schools in the Education Act 1997. The Academy Trust must:

- a) Provide independent careers guidance in accordance with Department for Education statutory guidance that has been developed in line with the eight Gatsby benchmarks of Good Career Guidance.
- b) Ensure that there is an opportunity for a range of education and training providers to access registered pupils in years 8-13 for the purpose of informing them about approved technical education qualifications or apprenticeships.
- c) Publish information about their careers programme and details of their named careers leader in accordance with the School Information (England) Regulations and the accompanying Department for Education guidance, "What academies, free schools and colleges should publish online.

**Assessment**

2.55. The Academy Trust must:

- a) ensure that pupils are entered for examinations in line with the requirements on maintained schools in section 402 of the Education Act 1996;
- b) comply with the relevant Guidance, as it applies to maintained schools, to ensure that pupils at the Academy take part in assessments, and in teacher assessments of pupils' performance;
- c) report on assessments as the Secretary of State requires, or provide any information on assessments, on the same basis that maintained schools are required to provide the information;
- d) for all Key Stages, allow monitoring and moderation of the Academy's assessment arrangements as required by the Secretary of State.

2.56. Unless specifically approved in writing by the Secretary of State, the Academy Trust must not use GAG to offer any course of education or training which leads to a qualification, if that qualification is not approved by the Secretary of State for the purpose of section 96 of the Learning and Skills Act 2000.

2.57. Unless informed by the Secretary of State that alternative information must be published, the Academy Trust must ensure that the following information is published on the Academy's website:

- a) where applicable, the Academy's most recent Key Stage 2 performance measures as published by the Secretary of State in the School and College Performance Tables, broken down as follows:
  - i. progress score in reading
  - ii. progress score in writing
  - iii. progress score in mathematics
  - iv. percentage of pupils who achieved the expected standard in reading, writing and mathematics

- v. percentage of pupils who achieved at a higher standard in reading, writing and mathematics
  - vi. average 'scaled score' in reading
  - vii. average 'scaled score' in mathematics
- b) where applicable, the Academy's most recent Key Stage 4 performance measures as published by the Secretary of State in the School and College Performance Tables, broken down as follows:
- i. Progress 8 score
  - ii. percentage of pupils entering the English Baccalaureate (EBacc)
  - iii. English Baccalaureate (EBacc) Average Point Score (APS)
  - iv. Attainment 8 score
  - v. percentage of pupils achieving grade 5 or above in GCSE English and mathematics
  - vi. percentage of pupils staying in education or going into employment after Key Stage 4 (pupil destinations)
- c) where applicable, the Academy's most recent 16-18 performance measures, as published by the Secretary of State in the School and College Performance Tables, broken down as follows:
- i. progress
  - ii. attainment
  - iii. English and mathematics progress
  - iv. retention
  - v. destinations

- d) information about where and how parents (including parents of prospective pupils) can access the most recent report about the Academy published by Her Majesty's Chief Inspector of Education, Children's Services and Skills; and
- e) information about where and how parents (including parents of prospective pupils) can access the School and College Performance Tables published by the Secretary of State.

2.58. The Secretary of State may direct the Academy to participate in international education surveys under the Education Act 1996, as if it were a maintained school.

### **3. GRANT FUNDING**

#### **Recurrent Expenditure grants**

- 3.1. The Secretary of State will pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy.
- 3.2. "**Recurrent Expenditure**" means any money spent on the establishment, conduct, administration and maintenance of the Academy which does not fall within Capital Expenditure.
- 3.3. In respect of Recurrent Expenditure, the Secretary of State will pay **General Annual Grant ("GAG")**, and may additionally pay **Earmarked Annual Grant ("EAG")**. These are two separate and distinct grants.
- 3.4. Except with the Secretary of State's consent, the Academy Trust must not make commitments to spending which have substantial implications for future grant. No decision by the Academy Trust will commit the Secretary of State to paying any particular amount of grant.

#### **Capital Grant**

- 3.5. The Secretary of State may pay a grant ("**Capital Grant**") to the Academy Trust for the purpose of spending on items of Capital Expenditure.
- 3.6. "**Capital Expenditure**" means expenditure on:

- a) acquiring land and buildings;
- b) erecting, enlarging, improving or demolishing any building including any fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;
- d) buying vehicles;
- e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;
- f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;
- g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary 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 capital expenditure in any grant letter relating to them;
- j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;
- k) professional fees properly and reasonably incurred in connection with the provision of any of the above; and
- l) VAT and other taxes payable on any of the above.

3.7. Any Capital Grant funding that may be made available to the Academy Trust will be notified to it by the Secretary of State.

- 3.8. The Academy Trust must spend Capital Grant only on items of Capital Expenditure approved by the Secretary of State and in accordance with conditions specified by the Secretary of State. Further, the Academy Trust must provide evidence that it has obtained all planning and other consents required for any proposed building and infrastructure development to be funded using Capital Grant.
- 3.9. In order to receive payments of Capital Grant, the Academy Trust must provide supporting invoices and certificates in the format specified by the Secretary of State.
- 3.10. The Academy Trust must provide an account of Capital Grant received, and associated spending on Capital Expenditure using Capital Grant, in the Academy Trust's financial statements and any other financial reports or returns that the Secretary of State may require.
- 3.11. If in its use of Capital Grant the Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State, or the project does not accord with the original specification or has not been completed, the Secretary of State may at his discretion not make any further payments of Capital Grant and require the Academy Trust to repay all or part of the Capital Grant.

### **General Annual Grant (GAG)**

- 3.12. The Secretary of State will pay GAG to the Academy Trust to cover the Academy's normal running costs or capital expenditure, including:
  - a) teachers' salaries and related costs (including pension contributions, full- and part-time teaching staff and payments in respect of seconded teachers);
  - b) non-teaching staff salaries and related costs (including pension contributions);
  - c) employees' expenses;

- d) buying, maintaining, repairing and replacing teaching and learning materials and other educational equipment, including books and stationery;
- e) buying, maintaining, repairing and replacing other assets including ICT equipment and software, sports equipment and laboratory equipment and materials;
- f) examination fees;
- g) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing and lighting); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- 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 lunches to pupils who are eligible to receive them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN and disabilities;
- l) administration; and
- m) establishment expenses and other institutional costs.

3.13. GAG for each Academy Financial 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 taking account of the number of pupils at the Academy;
- b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a maintained school;

- c) payment of any additional specific grants made available to maintained schools, where the Academy meets the criteria for those grants, and at the Secretary of State's discretion; and
- d) funding for any other costs to the Academy which the Secretary of State considers necessary.

3.14. The Academy Trust must use GAG only for maintaining, carrying on, managing and developing the Academy in accordance with this Agreement, except where the Secretary of State has given specific consent for the Academy Trust to use GAG for another charitable purpose.

3.15. In particular, the Academy Trust must not use GAG for:

- a) education and training for adults who are not pupils of the Academy, other than staff professional development and governance training and development;
- b) nursery provision for which parents are charged a fee;
- c) nursery provision to children outside the Academy's age range in clause 2.10;
- d) Children's Centres; or
- e) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

### **Calculation of GAG**

3.16 – 3.19. **[Not used]**

3.20. The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.21. For Academy Financial Years after that referred to in clause 3.20, 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.

3.22. 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 2.10. 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.

**3.23. [Not used]**

3.24. The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, 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.

**Earmarked Annual Grant (EAG)**

3.25. The Secretary of State may pay EAG to the Academy Trust for specific purposes, agreed between the Secretary of State and the Academy Trust, and described in the relevant funding letter. The Academy Trust must spend EAG only in accordance with that letter.

3.26. Where the Academy Trust is seeking a specific EAG for any Academy Financial Year, it must send a letter to the Department for Education outlining its proposals and the reasons for the request.

## Arrangements for paying GAG and EAG

- 3.27. Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how they have been calculated.
- 3.28. The amount of GAG for an Academy Financial Year will be decided annually by the Secretary of State, and notified to the Academy Trust in a funding letter sent before the relevant Academy Financial Year begins (the “**Annual Letter of Funding**”).
- 3.29. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as is practicable afterwards.
- 3.30. The Annual Letter of Funding will, as well as stating the grant amounts, set out how they have been calculated. It will not include grants which cannot be calculated in time because there is not enough information, or for other administrative reasons. Any such grants will be notified as soon as practicable.
- 3.31. The Secretary of State will pay GAG in monthly instalments on or before the first day of each month (“the relevant month”), to fund the salaries and other payroll costs of all monthly paid employees and all other costs payable during the relevant month. The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.
- 3.32. If GAG or EAG is miscalculated:
- a) because of a mistake by the Secretary of State, which leads to an underpayment to the Academy Trust, the Secretary of State will correct the underpayment in the same or subsequent Academy Financial Years;
  - b) because the Academy Trust provided incorrect information, which leads to an underpayment to the Academy Trust, the Secretary of State may correct the underpayment in the same or subsequent Academy Financial Years;

- c) for any reason which results in an overpayment to the Academy Trust, the Secretary of State may recover any overpaid grant in the same or subsequent Academy Financial Years, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

### **Other relevant funding**

#### **3.33. [Not used]**

- 3.34. The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.
- 3.35. The Academy Trust may receive additional funding from a LA under an agreement with that LA for the provision of support for pupils with SEN who require high levels of such support. The Academy Trust must ensure that all support required under that agreement is provided for those pupils.

## **4. FINANCIAL AND ACCOUNTING REQUIREMENTS**

### **General**

- 4.1. In order for the Secretary of State to provide grant funding to the Academy Trust, the Academy Trust must be fulfilling the financial and reporting requirements in this Agreement.
- 4.2. In its conduct and operation, the Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.
- 4.3. The Academy Trust must appoint an accounting officer and must notify the Secretary of State of that appointment. The Academy Trust must assign to the accounting officer the responsibilities of the role set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money'.

4.4. The Academy Trust must abide by the obligations of, and have regard to the guidance for, charities and charity trustees issued by the Charity Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to the body or person prescribed as the principal regulator under the Charities Act 2011.

**4.5. [Not used]**

**4.5A [Not used]**

### **Application of the Academies Financial Handbook**

4.6. In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust must follow the requirements of, and have regard to the guidance in, the Academies Financial Handbook.

4.7. The Academy Trust must have adequate insurance cover or opt into the Department for Education's arrangements as set out in the Academies Financial Handbook.

4.8. The Academy Trust must submit information about its finances to the Secretary of State in accordance with the Academies Financial Handbook, or as otherwise specified by the Secretary of State.

### **Budgeting for funds**

4.9. The Academy Trust must balance its budget from each Academy Financial Year to the next. For the avoidance of doubt, this does not prevent the Academy Trust from:

- a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or
- b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.17; 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 each Academy Financial Year to the next.
- 4.10. The Academy Trust may spend or accumulate funds from private sources or public sources, other than grants from the Secretary of State. Any surplus from private or public sources other than grants from the Secretary of State must be separately identified in the Academy Trust's accounts.
- 4.11. [Not used].**
- 4.12. The Academy Trust's budget must be approved for each Academy Financial Year by the Board of Charity Trustees.
- 4.13. The approved budget must be submitted to the Secretary of State in a form, and by a date, to be notified by the Secretary of State.

#### **Carrying forward of funds**

- 4.14. At the end of any Academy Financial Year the Academy Trust may carry forward unspent GAG from previous Academy Financial Years without limit (unless a limit is specified in the Academies Financial Handbook, or otherwise specified in writing by the Secretary of State, in which case that limit will apply).
- 4.15. The Academy Trust must use any GAG carried forward only for the purposes of GAG as set out in this Agreement, or otherwise as specified in the Academies Financial Handbook or in writing by the Secretary of State.
- 4.16. [Not used]**
- 4.17. Any additional grant made in accordance with clause 3.24, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice, may be carried forward without limitation or deduction until the circumstances set out in clause 3.24 cease to apply, or the Academy closes.

4.18. Any unspent grant not allowed to be carried forward under clauses 4.14-4.17 may be taken into account in the payment of subsequent grant.

### **Annual accounts and audit**

4.19. The Academy Trust must prepare and file with Companies House the annual reports and accounts required by the Companies Act 2006.

4.20. In addition, the Academy Trust must prepare its annual reports and accounts for each Academy Financial Year:

- a) in accordance with the Charity Commission's 'Accounting and Reporting by Charities: Statement of Recommended Practice', as if the Academy Trust were a registered charity; and
- b) additionally as the Secretary of State directs.

4.21. The Academy Trust's accounts must be audited annually by independent auditors appointed in line with the Academies Financial Handbook.

4.22. The accounts must carry an audit report stating whether, in the auditors' opinion, the accounts show a true and fair view of the Academy Trust's affairs. The accounts must also be accompanied by such other audit reports, relating to the use of grants and other matters, as the Secretary of State directs.

4.23. The Academy Trust's annual report must include the names of all members of the Academy Trust who served during the year.

4.24. The Academy Trust's annual reports and accounts, and the auditor's reports, must be submitted to the Secretary of State by 31 December each Academy Financial Year, or as otherwise specified by the Secretary of State.

4.25. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding Agreement and the names of its Charity Trustees and members. The Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

### **Keeping financial records**

4.26. The Academy Trust must keep proper accounting records. Statements of income and expenditure, statements of cash flow and balance sheets must be produced in such form and frequency as the Secretary of State directs.

#### **Access to financial records**

4.27. The books of accounts and all relevant records, files and reports of the Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the Department for Education and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money assessments. The Academy Trust must give those officials and contractors 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.

4.28. The Secretary of State may, at his expense, instruct auditors to report to him on the adequacy and effectiveness of the Academy Trust's accounting systems and internal controls to standards determined by the Secretary of State, and to make recommendations for improving the Academy Trust's financial management.

#### **Acquiring and disposing of Publicly Funded Assets**

4.29. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:

- a) acquire or dispose of freehold land;
- b) take up or grant a lease of land;
- c) dispose of any other class of capital asset,

except as expressly permitted in the Academies Financial Handbook, and subject to Part 3 of Schedule 1 to the Academies Act 2010.

4.30. The Academy Trust must give the Secretary of State 30 days' notice of its intention to take any of the actions in clause 4.29 (a) – (c) regardless of whether the Secretary of State's consent is required.

## **Retaining proceeds from the disposal of capital assets**

- 4.31. Except as permitted in the Academies Financial Handbook, if the Academy Trust sells capital assets which were acquired or enhanced wholly or partly using payments made by or on behalf of HM Government, the Academy Trust must pay to the Secretary of State, at his request, an amount of the sale proceeds equivalent to the proportion of the original cost of the acquisition or enhancement which was met by or on behalf of HM Government.
- 4.32. If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from a LA, the Predecessor School or the Predecessor School's foundation, the Academy Trust must, if required by the Secretary of State, pay all or part of the sale proceeds to the LA or to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

## **Transactions outside the usual planned range**

- 4.33. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:
- a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations; or
  - b) write off any debts or liabilities owed to it; or
  - c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)
- if the value of those transactions would be above any threshold specified in the Academies Financial Handbook.
- 4.34. The Academy Trust must give the Secretary of State 30 days' notice (or such shorter period as the Secretary of State may agree) of its intention to take any of the actions in clause 4.33 (a) – (c) regardless of whether the Secretary of State's consent is required.



4.35. The Academy Trust must promptly notify the Secretary of State of any loss arising from suspected theft or fraud in line with the requirements in the Academies Financial Handbook, or otherwise specified by the Secretary of State.

### **Borrowing**

4.36. Except as permitted in the Academies Financial Handbook, the Academy Trust must not borrow against Publicly Funded Assets, or so as to put Publicly Funded Assets at risk, without the Secretary of State's consent.

## **5. LAND CLAUSES**

**"Land"** means the land at North Road, Dibden Purlieu, Southampton, Hampshire, SO45 4ZF, being the land registered with title number HP742838 and demised by the Lease.

**"Lease"** means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the **"Landlord"**) under which the Academy Trust derives title to the Land.

**"Property Notice"** means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) which materially affects the Academy Trust's ability to use the Land for the purposes of the Academy or any correspondence that affects the extent of the Land.

### **Restrictions on Land transfer**

5.1. The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the **"Restriction"**) to be entered in the proprietorship register for the Land:

*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 Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;*

- b) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, permit 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 the 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**

- 5.2. The Academy Trust must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.
- 5.3. The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.
- 5.4. The Academy Trust must not, without the Secretary of State's consent:
  - a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;
  - b) grant any consent or licence; or
  - c) create or allow any encumbrance; or
  - d) part with or share possession or occupation; or

- e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land provided that that the Academy Trust may grant a licence or share occupation of part of the Land with a proprietor or proposed proprietor of an Academy or a body or individual providing services or facilities which are within the uses permitted by the Lease and where no relationship of landlord and tenant arises as a result of such occupation.

### **Option**

5.5. The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire the Land at nil consideration. The Secretary of State may exercise the Option in writing

- a) if this Funding Agreement is terminated for any reason;
- b) at any time on or after the issue of a Termination Notice; or
- c) if, under clause 5.11, the Academy Trust and the Secretary of State agree that part of the Land should be demised or subleased to another academy trust;
- d) if, under clause 5.13, the Academy Trust cannot use all or part of the Land as the permanent site of the Academy.

5.5.A If the Option is exercised, completion will take place;

- a) 28 days after the exercise date where a Termination Notice has not been issued; or
- b) where a Termination Notice has been issued, the date specified in the Termination Notice as to when this Agreement shall terminate;

and in either case in accordance with the Law Society’s Standard Conditions of Sale for Commercial Property in force at that date.

### **Option notice**

5.6. 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 the 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.

### **Property notices**

5.7. 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.

## **Breach of Lease**

- 5.8. If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.
- 5.9. After notifying the Secretary of State under clause 5.8, the Academy Trust must:
- a) promptly give the Secretary of State all the information he asks for about the breach;
  - b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
  - c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

## **Sharing the Land**

- 5.10 Where:
- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
  - b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,
- the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or sublet to another academy trust, as the Secretary of State considers appropriate, for the purpose of that academy trust establishing and maintaining an educational institution on the Land.
- 5.11 To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 5.10, the Academy Trust must use its best endeavours to procure either the approval of

the Landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Land with the incoming academy trust and to provide the incoming academy trust with security of tenure over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable legal costs incurred by the Academy Trust in connection with entering into any such arrangements under this clause.

5.12 For the purposes of clause 5.10:

- a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) a **parental need** will arise when the Department for Education is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
- c) **planned capacity** has the meaning given in clause 2.10.

5.13 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 he intends to exercise the Option to transfer the Land for nil consideration to himself or his nominee.

5.14 On or following the issue of a Termination Notice, the Secretary of State may give notice that he intends to exercise his rights under clause 5.5. Any such notice is without prejudice to his right to exercise any other rights available to him.

## 6. **COMPLAINTS**

6.1. If a complaint is made about matters arising wholly or partly before the Academy opened, and all or part of that complaint was investigated by the Local Government Ombudsman under Part III of the Local Government Act

1974 (**Part III**), or could have been investigated under Part III if the Predecessor School had remained a maintained school, the Academy Trust:

- a) must abide by the provisions of Part III as if the Academy were a maintained school;
- b) agrees that the Secretary of State will have the power to investigate the subject of the complaint as if it had taken place after the Academy opened; and
- c) must act in accordance with any recommendation from the Secretary of State as if that recommendation had been made under Part III and the Academy were a maintained school.

6.2. If the Secretary of State could have given an order or a direction under sections 496 or 497 of the Education Act 1996 to the governing body of the Predecessor School relating to matters occurring within the 12 months immediately before the Academy opened, the Academy Trust:

- a) agrees that the Secretary of State may give orders or directions to the Academy Trust as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school; and
- b) must act in accordance with any such order or direction from the Secretary of State.

6.3. If a complaint made to the governing body of the Predecessor School has not been fully investigated when the Academy opens, the Academy Trust must continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

6.4. If a complaint is made to the Academy Trust about matters arising wholly or partly during the 12 months before the Academy opened, the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the Academy opened.

## **7. TERMINATION**

## **Termination by either party**

7.1. 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**

7.2. 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
- 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 by a breakdown of discipline; or
- e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

7.3. A Termination Warning Notice served under clause 7.2 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.

7.4. 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.



- 7.5. If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 7.3(c), or has not completed the action required in the Termination Warning Notice under clauses 7.3(a) and (b) (and any further action specified under clause 7.4) he may serve a Termination Notice.

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

- 7.6. 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.
- 7.6A If, following an inspection, the Chief Inspector makes a notification to the Secretary of State in respect of the Academy under section 87(4) of the Children Act 1989, or the Chief Inspector is otherwise of the opinion that the Academy Trust has not met the National Minimum Standards or the Independent School Standards in respect of the Academy, the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.
- 7.7. If the Secretary of State has served a Termination Warning Notice under clause 7.6 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.
- 7.8. Not used.

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

- 7.9. If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against the determination is pending, he may serve a Termination Notice.
- 7.10. The Secretary of State may serve a Termination Notice if any of the following events occurs, or if he considers that there is a serious risk that any of them may occur:
- a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement 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 cannot pay its debts within the meaning of section 123 of the Insolvency Act 1986 with, for the purposes of this clause, section 123 (1)(a) of this Act having an effect as if £10,000 were substituted for £750. The Academy Trust will not be considered unable to pay its debts for the purposes of this clause if it is contesting any such demand in good faith; or
  - d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or 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 15 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.

7.11. The Academy Trust must promptly notify the Secretary of State, with an explanation of the circumstances, after receiving any petition which may result in an order for its winding up or administration.

7.12. If

- a) Any Charity Trustee or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) The Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Charity Trustee or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

7.13. For the purposes of clause 7.12 a Charity Trustee or member of the Academy Trust will be “unsuitable” if that Charity Trustee or member:

- a) has been convicted of an offence;
- b) has been given a caution in respect of an offence;
- c) is subject to a relevant finding in respect of an offence; or
- d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Charity Trustee or member is unsuitable to take part in the management of the Academy.

7.14. For the purposes of clause 7.13:

- a) a Charity Trustee or member of the Academy Trust will be subject to a “relevant finding” in respect of an offence if:

- i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;
  - ii. that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
  - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.
- b) “relevant conduct” is conduct by a Charity Trustee or member of the Academy Trust which is:
- i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
  - ii. found to be in breach of professional standards by a professional body; or
  - iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Academy.

7.15. **[Not used]**

7.16. **[Not used]**

7.17. **[Not used]**

7.18. **[Not used]**

7.19. **[Not used]**

### **Change of Control**

7.20. The Secretary of State may at any time, subject to clause 7.21, serve a Termination Notice if there is a change:

- a) in the Control of the Academy Trust; or

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

- 7.21. Where a person ('P') is a member or director of a 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.
- 7.22. The Academy Trust must promptly notify the Secretary of State if there is a proposed or actual change of Control of the Academy Trust, or of a legal entity that Controls the Academy Trust.
- 7.23. When notifying the Secretary of State under clause 7.22, the Academy Trust must seek his agreement that, if he is satisfied with the change of Control, he will not exercise his right to terminate this Agreement under clause 7.20.

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

- 7.24. If the Secretary of State serves a Termination Notice under clause 7.1, 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.
- 7.25. If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 7.1, 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.

#### **Effect of Termination**

- 7.26. 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.
- 7.27. Subject to clauses 7.28 and 7.29, if the Secretary of State terminates this Agreement under clause 7.1, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 7.1, he may at his discretion indemnify or compensate the Academy Trust.
- 7.28. 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.

7.29. 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 7.27, 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.

7.30. 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 7.30(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.

7.31. The Secretary of State may:

- a) waive all or part of the repayment due under sub-clause 7.30(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.

## **8. OTHER CONTRACTUAL ARRANGEMENTS**

### **Information**

- 8.1. The Academy Trust must promptly provide to the Secretary of State any information that he requests about the Academy Trust or the Academy, which he regards as necessary to fulfil his role and responsibilities.
- 8.2. The Secretary of State will give the Academy Trust any information it reasonably requires of him for the running of the Academy.

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

- 8.3. The Academy Trust must allow Department for Education officials to enter the Academy at any reasonable time. All records, files and reports relating to the running of the Academy must be available to them at any reasonable time. Two Department for Education officials may attend and speak at any meetings of the Board of Charity Trustees or any other meetings of Charity Trustees of the Academy Trust, but will 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.
- 8.4. The following documents must be provided to the Secretary of State or any person nominated by the Secretary of State on request:
  - a) the agenda for every meeting of the Board of Charity Trustees or any committee to which it delegates any of its functions;
  - b) the draft minutes of every such meeting, if they have been approved by the 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.
- 8.5. The Academy Trust may exclude from items provided under clause 8.4 any content 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, the Academy Trust reasonably believes should remain confidential.

### **Information Sharing with Local Authorities – Statutory Responsibilities**

8.5.1. The Academy Trust must provide:

- a) the name, address and date of birth of the pupil or student;
- b) the name and address of a parent of the pupil or student;
- c) information in the institution's possession about the pupil or student (except if the pupil or student concerned (in the case of a pupil or student who has attained the age of 16) or a parent of the pupil or student concerned (in the case of a pupil or student who has not attained the age of 16) has instructed the Academy Trust not to provide information of that kind);

upon request under section 14 of the Education and Skills Act 2008 from a local authority (for the purpose of enabling or assisting it to exercise its functions under Part 1 of that Act); or

upon request under section 72 of that Act from a body providing services under sections 68 or 70(1)(b) of the Act (for the purposes of providing such services), the following information to that body.

### **Notices**

8.6. A notice or communication to a party in connection with this Agreement:

- a) must be in writing (excluding email, except where agreed in advance) and in English;
- b) must be delivered by hand or sent by pre-paid first-class post or other next working day delivery service;
- c) will be deemed to have been received:
  - i. if delivered by hand, at the time when a delivery receipt is signed or when the notice is left at the address in paragraph (d), or
  - ii. if posted, at 9.00 am on the second working day after posting; and
- d) must be sent to the party for the attention of the contact and at the address listed as follows (or to a different contact or address previously



notified to the sending party, the change taking effect five business days after deemed receipt of the notice):

Name of party	Position of contact	Address
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
Academy Trust	Chair of Board of Charity Trustees	North Road, Dibden Purlieu, Southampton, Hampshire, SO45 4ZF

### General provisions

- 8.7. The Academy Trust cannot assign this Agreement.
- 8.8. 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 it), 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.
- 8.9. Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.
- 8.10. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.
- 8.11. 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) will 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.

8.12. **[Not used.]**

This Agreement was executed as a Deed on 2021

Executed on behalf of the **Academy Trust** by:

.....

and

.....

**Director**

**Witness**

Name:

Address:

The Corporate Seal of

**THE SECRETARY OF STATE FOR EDUCATION**

affixed to this deed is authenticated by:

.....

**Duly Authorised**

## **ANNEXES**

### **9. 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.

9.1. The Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with SEN, 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 or the pupil (if over compulsory school age) may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.



Department  
for Education

© Crown copyright 2020

You may re-use this document/publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence v2.0. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit [www.nationalarchives.gov.uk/doc/open-government-licence/version/2](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/2)

email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

We welcome feedback. If you would like to make any comments about this publication, please email [AFSPD.feedback@education.gov.uk](mailto:AFSPD.feedback@education.gov.uk), quoting the title of this document. Specific project queries should be sent to the allocated project lead/lead contact.

About this publication:

enquiries [www.education.gov.uk/contactus](http://www.education.gov.uk/contactus).

download [www.gov.uk/government/publications](http://www.gov.uk/government/publications).

Reference: DfE-00219-2020



Follow us on Twitter:  
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:  
[facebook.com/educationgovuk](https://facebook.com/educationgovuk)