



Department
for Education

Academy and free school: master funding agreement

December 2020 v5

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SUMMARY SHEET

Information about the Academy Trust:

Name of Academy Trust	St Joseph Catholic Multi Academy Trust
Address	Centre for Evangelisation, Croxteth Drive, Liverpool L17 1AA
Company Number	13245781
Contact details for the Chair of Charity Trustees	Fr Michael Fitzsimons Email: m.fitzsimons@rcaol.org.uk Tel: 0151 522 1000

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. INTRODUCTION

Introduction and definitions

- 1.1 This Agreement is between the Secretary of State for Education (the **“Secretary of State”**) and St Joseph Catholic Multi Academy Trust (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 13245781. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.
- 1.3 The Academy Trust has been established as part of a pilot to provide particular support to Higher Risk Catholic Academies (as later defined) in the Catholic Archdiocese of Liverpool and the Catholic Diocese of Shrewsbury. The terms on which the pilot will operate are set out in this Agreement. The parties' intentions as to how to operate the pilot (which the parties agree do not have legal effect) are set out for information only in the Annex to this Agreement.
- 1.4 In order for the Academy Trust to establish and run a number of Academies in England, according to the provisions of the Academies Act 2010, 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 and in each **Supplemental Agreement** that has been entered into by the Academy Trust and the Secretary of State in respect of each Academy.
- 1.5 In this Agreement, and (except as expressly provided otherwise) in each Supplemental Agreement, the capitalised words and expressions listed below will have the following meanings:-

Definitions of types of Academies:

An **“Academy”** is a school or educational institution established and run in accordance with the Academies Act 2010, and where this Agreement refers

collectively to “**Academies**” run by the Academy Trust, this may include any of the following types of school or educational institution:

A “**Free School**” means an Academy which is a new educational institution within the meaning of section 9(1)(a) of the Academies Act 2010;

A “**Higher Risk Catholic Academy**” means a Catholic Academy (or other Catholic educational institution to be converted into an Academy) identified by the Secretary of State where:

- (i) it is subject to or eligible for a Directive Academy Order; or
- (ii) it requires special measures to be taken in relation to that Academy or the Academy requires significant improvement; or
- (iii) it is Coasting; or
- (iv) it is maintained by an academy trust which has significant financial issues such as a significant and continuing forecast deficit, significant financial mismanagement or significant liabilities;
- (v) it is maintained by an academy trust which is in breach of a funding agreement with the Secretary of State and/or the Secretary of State is entitled to terminate such a funding agreement (whether or not the relevant funding agreement concerns the institution or not); or
- (vi) in the opinion of the Secretary of State, there are no appropriate sponsors which are prepared and able to maintain the institution; or
- (vii) it has significant financial issues such as a significant and continuing forecast deficit, significant financial mismanagement or significant liabilities; or
- (viii) there are complex cost barriers to conversion or transfer, such as PFI contracts or substantial buildings issues; or
- (ix) it is maintained by an academy trust which is subject to a financial notice to improve; or

- (x) it has a significant history of educational underperformance;

A “**Mainstream Academy**” means an Academy or a Free School which meets the requirements set out in section 1A(1) of the Academies Act 2010;

An “**Alternative Provision Academy**” means an Academy or a Free School which meets the requirements set out in section 1C(1) of the Academies Act 2010;

A “**Special Academy**” means an Academy or a Free School which meets the criteria set out in section 1A(2) of the Academies Act 2010;

A “**Sponsored Academy**” will be (unless otherwise stated) a Mainstream Academy which is established pursuant to an Academy Order under section 4 of the Academies Act 2010, which will be designated as a Sponsored Academy within the Supplemental Agreement applicable to that Academy, and as such certain conditions may apply to it;

“**Studio School**” means a type of Mainstream Academy, principally for pupils and students aged between 14 and 19, which places an emphasis on such pupils and students obtaining employability skills through project-based learning;

“**University Technical College**” means a type of Free School, principally for pupils and students aged between 14 and 19, which provides technical education with the emphasis on a particular industry or scientific sector;

A “**16-19 Academy**” means an Academy or a Free School which meets the requirements set out in section 1B(1) of the Academies Act 2010.

Other defined terms:

“**16-19 Funding Guidance**” means the guidance published by the ESFA and amended from time to time, on behalf of the Secretary of State.

“**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.

“Commissioner” means LAs and/or schools referring pupils to an Alternative Provision Academy for admission under the legal powers set out in the relevant Supplemental Agreement.

“Continuance Notice” means a notice sent by the Secretary of State to the Academy Trust, confirming that the special provisions are to continue in accordance with clause 1.34b) or clause 1.35.

“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”

“EHC plan” means an education, health and care plan made under section 37 of the Children and Families Act 2014.

“ESFA” means the Education and Skills Funding Agency.

“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.

“Key Performance Indicators” means the key performance indicators set out in clause 1.N of the relevant Supplemental Agreement for a Higher Risk Catholic Academy.

“LA” means a local authority.

“Local Governing Body” means the committee (if any) established by the Academy Trust in relation to an Academy or Academies, within the Academy Trust, in accordance with the Articles.

“Parents” means parents¹ or guardians.

“Predecessor School” means the school which the Academy in question replaced, where applicable.

“Pilot Period” means either a period of two years commencing on the date of this Agreement or, in the event that a Pilot Period Extension Notice is served, a period of three years commencing from the date of this Agreement.

“Pilot Period Extension Notice” means a written notice served under clause 1.32 confirming that the duration of the Pilot Period will be extended to three years.

“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

¹ Parent has the meaning set out in section 576 of the Education Act 1996

“Pupil Referral Unit” means any school established in England and maintained by a LA which is specially organised to provide education for children falling within section 19(1) of the Education Act 1996.

"Required Skillset" means the following skills and resources:

- a) a proven track record in school improvements and in particular a proven track record in driving transformational improvements in schools in challenging circumstances;
- b) previous experience of senior management or governance in an educational institution or in the broader public or commercial sector;
- c) previous experience in business recovery and turnaround;
- d) an understanding of what is required to stabilise a school and implement good and sustainable governance;
- e) a range of expertise in the various aspects of running a business (commercial, legal, and HR);
- f) strategic financial management experience and understanding of good financial practice;
- g) a clear idea of what they intend to achieve as the Academy Trust and how they intend to deliver it; and
- h) the ability to mobilise quickly.

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

"Special Provisions" means clauses 1.32 to 1.36.

“Start-up Period” has the meaning as defined in the relevant Supplemental Agreement.

“Supplemental Agreement” means an agreement supplemental to this Agreement for any Academy which the Academy Trust agrees to establish and maintain and the Secretary of State agrees to fund, which is substantially in the form of the supplemental funding agreement entered into by both parties at the time that this Agreement is signed.

“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 and each Supplemental Agreement on the date specified in the notice.

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

1.7 A reference in this Agreement to any party or body includes its successors.

1.8 Any words following the terms ‘include’, ‘including’ or ‘in particular’ are by way of illustration, not limitation.

1.9 A reference in this Agreement to land includes any buildings or structures on the land.

1.10 A reference in this Agreement to pupils includes students at a 16-19 Academy.

1.11 Where any legislation, legal requirement or published guidance is referred to, unless otherwise stated, the following terms should be interpreted as follows:

- a) “school” refers to the relevant Mainstream Academy, Alternative Provision Academy, or Special Academy, and “educational institution” refers, where the context so admits, to a 16-19 Academy;
- b) the “head teacher” may refer to the Academy’s head teacher or principal;

- c) references to the “governing body” or “responsible authorities” will be taken to refer to the Academy Trust; and
- d) references to registered pupils will be treated as references to registered pupils at the Academy.

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

1.13 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

1.14 In order for the Academy Trust to establish and run independent schools and/or educational institutions in England, according to the terms of the Academies Act 2010, and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the conditions and requirements set out in this Agreement, and in each Supplemental Agreement for an Academy for which payments are claimed. In particular, the Academy Trust must ensure the Academies it runs meet the applicable requirements as follows:

- a) for **Mainstream Academies**, those specified in Section 1A of the Academies Act 2010;
- b) for **Alternative Provision Academies**, those specified in Section 1C of the Academies Act 2010;
- c) for **16-19 Academies**, those specified in Section 1B of the Academies Act 2010;
- d) for **Special Academies**, those specified in section 1A(2) of the Academies Act 2010, and:

- i. the Academy Trust must ensure special educational provision is made at each of the Special Academies for one or more categories of SEN. These categories may include, but are not limited to: Specific Learning Difficulties, Moderate Learning Difficulties, Severe Learning Difficulties, Profound and Multiple Learning Difficulties, Social, Emotional and Mental Health Needs, Speech Language and Communication Needs, Autistic Spectrum Disorder, Visual Impairment, Hearing Impairment, Multi-Sensory Impairment, Physical Disability.
- ii. the Academy Trust may not refuse to admit a child or young person whose EHC plan names one of the Special Academies on the sole basis that some, or all, of the child's or young person's SEN do not feature in the categories referred to in clause 1.13(d)(i) of this agreement.
- iii. the Academy Trust must comply with all of the obligations imposed upon special academies by legislation.

1.15 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 each of its Academies is at the heart of its community, promoting community cohesion and sharing facilities with other schools and/or other educational institutions and the wider community.

1.16 The Academy Trust must conduct its Academies 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 to 4.8;
and
 - d) this Agreement, and any and all Supplemental Agreements.
- 1.17 The Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for the receipt and management of donations for the purpose of its aims as specified in the Articles.
- 1.18 The Academy Trust must obtain the Secretary of State's consent before applying to have an Academy 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.
- 1.19 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.
- 1.20 The Academy Trust is not required to publish information under this Agreement, or any Supplemental Agreement, if to do so would breach its obligations under data protection legislation.
- 1.21 The Academy Trust must ensure that its Academies meet the needs of individual pupils, including pupils with SEN and disabilities.

Governance

- 1.22 The Academy Trust will be governed by a board comprising the Charity Trustees of the Academy Trust (the **"Board of Charity Trustees"**)
- 1.22A Subject to clause 1.16, the Board of Charity Trustees shall collectively have:
- a A proven track record of the Required Skillset;
 - b A demonstrable commitment to the seven principles of public life (the "Nolan Principles");

- c A good understanding of the regulatory framework and the responsibilities of members and trustees.
- 1.23 The Board of Charity Trustees must have regard to any Guidance on the governance of academy trusts.
- 1.24 Where the Directors have appointed Local Governing Bodies in respect of one or more of the Academies, the Academy Trust must publish a scheme of delegation setting out the structure and remit of the Board of Charity Trustees and any committees, including any Local Governing Bodies.
- 1.25 The Academy Trust must ensure that it engages with the relevant Local Governing Body (if any) or representatives of each Academy, and that arrangements are in place for matters relating to the functioning of each Academy to be brought to the attention of the Charity Trustees of the Academy Trust.
- 1.26 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.
- 1.27 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.
- 1.28 If the Academy Trust establishes and maintains a Free School, it must, in addition to its obligations under clauses 1.24 and 1.25:
- a) provide to the Secretary of State the names of all new or replacement Charity Trustees of the Academy Trust, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Charity Trustees they replaced as soon as is practicable and in any event within 14 days of their appointment or election; and

- b) not appoint or elect any new or replacement Charity Trustees 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.

1.29 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.

1.30 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.

1.31 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.

Special Provisions

1.32

- a) The Special Provisions shall apply only during the Pilot Period; or
- b) if the Secretary of State has notified the Academy Trust in accordance with clause 1.34b) or clause 1.35, (in each case, a **Continuance Notice is issued**) for the duration of this Agreement.

Notwithstanding the foregoing, the Special Provisions shall cease to apply if this Agreement expires or is terminated.

1.33 The Academy Trust shall, within the Pilot Period, accept the transfer to it of any Higher Risk Catholic Academy within the Catholic Archdiocese of Liverpool

and the Catholic Diocese of Shrewsbury and will if instructed to do so transfer a Higher Risk Catholic Academy pursuant to the following requirements:

- a) the Secretary of State may identify a Higher Risk Catholic Academy to the Academy Trust by written notice;
- b) the Academy Trust shall be required to accept the transfer of a Higher Risk Catholic Academy unless it demonstrates to the Secretary of State's satisfaction that to do so would:
 - i. cause the Academy Trust to be in breach of the Articles or cause the Charity Trustees to be in breach of their duties; or
 - ii. mean that the Academy Trust had accepted more than 10 Higher Risk Catholic Academies during the Pilot Period;
- c) the supplemental funding agreement, relating to the Higher Risk Catholic Academy, should be substantially in the form of the Supplemental Agreement in Annex 2;
- d) the Academy Trust will enter into the relevant Supplemental Agreement within 3 months (or such reasonable longer period as the Secretary of State may agree) of service of the notice referred to in clause 1.31a);
- e) the Academy Trust will:
 - i. transfer a Higher Risk Catholic Academy to another Catholic academy trust if instructed, in writing, by the Secretary of State to effect such transfer by using the deed of novation and amendment referred to in the relevant Supplemental Agreement;
 - ii. use its best endeavours to transfer the relevant assets to the incoming Catholic academy trust by using the relevant model academy commercial transfer agreement, as may be amended from time to time, a copy of which can be found on the government website (adapted to reflect that the Academy Trust would be the transferor).

- 1.34 No later than 6 months prior to expiry of the initial two years of the Pilot Period, the Secretary of State will notify the Academy Trust in writing whether:
- a) The Pilot Period will be extended for a further year (so that it runs for three years); or
 - b) If the Pilot Period is not extended beyond its initial two years, whether in his discretion, the Secretary of State has determined that the Special Provisions should continue after the end of the Pilot Period until expiry or termination of this Agreement, failing which the Special Provisions will expire at the end of the Pilot Period.
- 1.35 If the Pilot Period has been extended in accordance with clause 1.32, no later than 6 months prior to expiry of the Pilot Period, the Secretary of State will notify the Academy Trust in writing whether in his discretion, the Secretary of State has determined that the Special Provisions should continue after the end of the Pilot Period until expiry or termination of this Agreement, failing which the Special Provisions will expire at the end of the Pilot Period.
- 1.36 During the Pilot Period the Academy Trust will not, without the Secretary of State's prior written approval, sponsor any Academy other than a Higher Risk Catholic Academy in accordance with the Special Provisions.

2. RUNNING OF THE ACADEMIES

Length of school day and year

- 2.1 The length of the school day and year will be the responsibility of the Academy Trust and for the purpose of this paragraph “school” also means a **16 to 19 Academy**.

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 The Academy Trust must designate a staff member at each 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 issued by the Secretary of State.
- 2.5 Teachers' pay and conditions of service at the Academies are the responsibility of the Academy Trust.
- 2.6 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.
- 2.6.1 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.

- 2.7 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.
- 2.8 Where a member of the teaching staff employed at an 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 has 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.

School meals

- 2.9 Subject to clause 2.12, 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 a local authority were to any of its Academies.
- 2.10 The Academy Trust must comply with school food standards legislation as if its Academies were maintained schools.
- 2.11 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.

- 2.12 Clauses 2.9 to 2.11 do not apply to 16-19 Academies. For **16-19 Academies**, the Academy Trust must comply with any Guidance in relation to free meals in the further education sector, as far as it applies to those Academies.

Pupil Premium

- 2.13 For all of its Academies eligible for Pupil Premium, and for each 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 the Pupil Premium allocation on;
 - c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year;
 - d) the impact of the previous year's Pupil Premium allocation on educational attainment.
- 2.14 For all of its Academies eligible for Year 7 literacy and numeracy catch-up premium funding, and for each Academy Financial Year, the Academy Trust must 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;
 - 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

- 2.15 For all its Academies except 16 to 19 Academies, 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 its Academies were maintained schools.
- 2.16 There must be no charge for admission to or attendance at any of the Academies, and the Academies will only charge pupils where the law allows maintained schools to charge.
- 2.17 Clause 2.16 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 an Academy.
- 2.18 Notwithstanding clause 2.16, the Academy Trust may charge people who are not registered pupils at one of its Academies for education or use of facilities.
- 2.19 Where an Academy provides a pupil with board and lodging, the Academy Trust must not charge the parent of that pupil more than the cost to the Academy Trust of providing the board and lodging, except as required by the Fees, Charges and Levies guidance in HM Treasury's publication 'Managing Public Money'.

Exclusions

- 2.20 In respect of **Mainstream Academies, and Special Academies which admit pupils without EHC plans, under clause 2.D of the Special School: supplemental funding agreement**, the Academy Trust must, if asked to by a LA, enter into an agreement which 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 whom 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 Schools Standards and Framework Act 1998.

Curriculum

- 2.21 The curriculum is the responsibility of the Academy Trust.
- 2.22 The Academy Trust must ensure that the curriculum provided in each Academy to pupils up to the age of 16 is balanced and broadly based. In respect of **Mainstream, Special Academies, UTCs and Studio Schools**, the Academy Trust must ensure that the curriculum includes English, mathematics, science and (subject to the provisions in clause 2.V of the Mainstream academy and free school: supplemental funding agreement), (subject to the provisions in clause 2.V of the UTC and Studio School supplemental funding agreement) and (subject to the provisions in clause 2.HH-JJ of the Special School: supplemental funding agreement) religious education. In respect of **Alternative Provision Academies** the Academy Trust must ensure that the curriculum includes English, mathematics and science.
- 2.23 The Academy Trust must publish information in relation to the current curriculum provision at each Academy on that Academy's website, including:
- a) the content of the curriculum;
 - b) its approach to the curriculum;
 - c) if applicable, the GCSE options and other Key Stage 4 qualifications offered by each Academy and, if applicable, any other qualifications offered by each Academy;
 - d) the names of any phonics or reading schemes in operation for Key Stage 1 if applicable; and
 - e) how parents (including parents of prospective pupils) and Commissioners (if applicable) can obtain further information about that Academy's curriculum.

- 2.24 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 an Academy.
- 2.25 The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory. In respect of any **Alternative Provision Academies** and **16-19 Academies**, the Academy Trust must do this where relevant to the curriculum.
- 2.26 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.
- 2.26A The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.
- 2.27 The Academy Trust must ensure that careers guidance is provided at each of its Academies, 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 2008 and the accompanying Department for Education guidance, "What academies, Free schools and colleges should publish online"

Assessment

- 2.28 The Academy Trust must:

- a) ensure that pupils and students at each of its Academies 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, in respect of each **Mainstream Academy**, and each **Special Academy** to ensure that pupils take part in assessments, and in teacher assessments of pupils' performance; and must do so for each **Alternative Provision Academy** unless there are exceptional reasons to do otherwise;
- c) ensure that students at each **16 to 19 Academy** take part in assessments of students' performance appropriate to the qualifications offered;
- d) 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;
- e) for all Key Stages, allow monitoring and moderation of the Academy's assessment arrangements as required by the Secretary of State.

2.29 Unless specifically approved in writing by the Secretary of State, the Academy Trust must not use General Annual Grant (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.

2.30 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 relevant Academy's website for each **Mainstream Academy**, for each **Alternative Provision Academy**, and where relevant for each **Special Academy**, and in respect of sub-paragraph b) where relevant for each **Studio School**:

- a) if 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) if 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
 - 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 as to where and how parents (including parents of prospective pupils) can access the School and College Performance Tables published by the Secretary of State.

2.31 The Academy Trust must ensure that, in relation to any **16-19 Academies**, any performance information requested by the Secretary of State is published on the Academy's website.

2.32 The Secretary of State may direct any 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 each Academy.

- 3.2 **“Recurrent Expenditure”** means any money spent on the establishment, conduct, administration and maintenance of an 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 will 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 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;
- 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 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 towards the normal running costs or capital expenditure of each of its Academies, 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, lighting etc.); 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 each **Mainstream Academy** and **Special 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 Academies in accordance with this Agreement and the relevant Supplemental 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 (but without limitation) 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 of the relevant Academy's age range as stated in the applicable Supplemental Agreement;
- d) Children's Centres;
- e) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

Earmarked Annual Grant (EAG)

- 3.16 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 as described in the relevant funding letter. The Academy Trust must spend EAG only in accordance with that letter.
- 3.17 Where the Academy Trust is seeking a specific EAG for any Academy Financial Year, it must send a letter outlining its proposals and the reasons for the request to the Department for Education.

Arrangements for paying GAG and EAG

- 3.18 Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts in respect of each Academy which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how these have been calculated.
- 3.19 The amounts of GAG for an Academy Financial Year will be determined 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"**).

- 3.20 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.
- 3.21 The Annual Letter of Funding will, as well as stating the grant amounts, set out how these 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.
- 3.22 The Secretary of State will pay GAG in monthly instalments on or before 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.
- 3.23 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

- 3.24. 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, and any Supplemental Agreements.
- 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 requirements 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 appointed as the principal regulator under the Charities Act 2011.
- 4.5 The Academy Trust must abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State, in respect of any provision for students who are above compulsory school age until the academic year in which they reach the age of 19.
- 4.5A If the Secretary of State pays any grant to or on behalf of the Academy Trust, in respect of any Free Schools that the Academy Trust establishes and maintains, which includes an amount to cover VAT, the Academy Trust shall, having paid the VAT, promptly submit a VAT reclaim application to Her

Majesty's Revenue and Customs (HMRC). Any failure by the Academy Trust to submit a VAT reclaim application to HMRC, or to pursue the application diligently, or to repay any reclaimed amount to the Secretary of State as soon as reasonably practicable following receipt will be taken into account by the Secretary of State in:

- a) calculating and paying any subsequent grant to the Academy Trust; or
- b) adjusting GAG payable to the Academy Trust in subsequent Academy Financial Years.

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 in to 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 4.14-4.16 and 3.L of the relevant Supplemental Agreement; 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 its Academies balance their respective overall budgets 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 for the benefit of the Academy Trust as it sees fit. 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 For clarity, and in accordance with the intent of parity of funding with LA maintained schools, in circumstances where a Predecessor School had a deficit balance and the Department for Education has settled this with the relevant LA, that amount will be recovered from the Academy Trust's GAG over a period not normally exceeding 3 years (unless the Secretary of State in his discretion decides otherwise) after the Academy opened.
- 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 as 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 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 Any additional grant provided for an Academy's Start-Up Period may be carried forward, without limitation or deduction, until the Start-Up Period ends.
- 4.17 Any unspent grant not allowed to be carried forward under clauses 4.14-4.16 and 3.L of the relevant Supplemental Agreement may be taken into account in the payment of subsequent grant.

Annual accounts and audit

- 4.18 The Academy Trust must prepare and file with Companies House the annual reports and accounts required by the Companies Act 2006.
- 4.19 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 was a registered charity; and
 - b) otherwise as the Secretary of State directs.
- 4.20 The Academy Trust's accounts must be audited annually by independent auditors appointed in line with the Academies Financial Handbook.
- 4.21 The accounts must carry an audit report stating whether, in the opinion of the auditors, the accounts show a true and fair view of the Academy Trust's affairs. The accounts must also be supported by such other audit reports, relating to the use of grants and other matters, as the Secretary of State directs.
- 4.22 The Academy Trust's annual report must include the names of all members of the Academy Trust who served during the year.

- 4.23 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. 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

- 4.24 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

- 4.25 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 studies. 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.
- 4.26 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

- 4.27 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; or
- b) take up or grant a leasehold of land; or
- c) dispose of any other class of capital assets.

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

- 4.28 The Academy Trust must give the Secretary of State 30 days' notice of its intention to take any of the actions in clause 4.27 (a) – (c) regardless of whether the Secretary of State's consent is required.

Retention of proceeds from the disposal of capital assets

- 4.29 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.
- 4.30 If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from a LA, a Predecessor School or a 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

- 4.31 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;
 - 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.

- 4.32 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 4.31 (a) – (c) regardless of whether the Secretary of State's consent is required.
- 4.33 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

- 4.34 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. COMPLAINTS

- 5.1 With regards to a **Mainstream Academy**, a **Special Academy** an **Alternative Provision Academy** or a **16-19 Academy**, 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/Pupil Referral Unit had remained a maintained school/Pupil Referral Unit, the Academy Trust:
 - a) must abide by the provisions of Part III as if the Academy were a maintained school/Pupil Referral Unit;

- 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/Pupil Referral Unit.

5.2 With regards to a **Mainstream Academy**, a **Special Academy** or a **16-19 Academy**, if the Secretary of State could have given an order or a direction under section 496 or 497 of the Education Act 1996 to the governing body of the Predecessor School and that order or direction related 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.

5.3 If at the time of the opening of any **Mainstream Academy**, **Special Academy**, **Alternative Provision Academy** or **16-19 Academy** the investigation of a complaint made to the governing body of the Predecessor School/Pupil Referral Unit has not yet been completed, the Academy Trust must continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

5.4 If a complaint is made to the Academy Trust about matters arising in whole or in part during the 12 months prior to the opening of any **Mainstream Academy**, any **Special Academy** any **Alternative Provision Academy** or any **16-19 Academy** the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the Academy opened.

6. TERMINATION

- 6.1 This Agreement will commence on the date of delivery and continue until terminated in accordance with clauses 6.2-6.7, or until all Supplemental Agreements have terminated.

Termination by the Secretary of State

- 6.2 The Secretary of State may serve a Termination Notice if any of the following events occur, 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 (as amended); 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 will have effect as if £10,000 was substituted for £750. The Academy Trust will 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 (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.

6.3 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.

6.4 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.

6.5 For the purposes of clause 6.4 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 Academies.

6.6 For the purposes of clause 6.5:

- 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.

Change of Control of the Academy Trust

6.7 The Secretary of State may at any time, subject to clause 6.8, 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.

6.8 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.

- 6.9 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.
- 6.10 When notifying the Secretary of State further to clause 6.9, 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 further to clause 6.7.

Special Provisions

- 6.11 Subject to clause 6.12, the Secretary of State may serve a Termination Notice if the Academy Trust refuses to accept the transfer of a Higher Risk Catholic Academy in breach of the Academy Trust's obligations in clause 1.33.
- 6.12 Before issuing a Termination Notice under clause 6.11, the Secretary of State will invite the Academy Trust to make representations as to whether it is entitled under clause 1.33 to refuse to accept the transfer of the relevant Higher Risk Catholic Academy.

7. OTHER CONTRACTUAL ARRANGEMENTS

Information

- 7.1 The Academy Trust must promptly provide to the Secretary of State any information about the Academy Trust, or any of its Academies, which he regards as necessary to fulfil his role and responsibilities.
- 7.2 The Secretary of State will give the Academy Trust any information it reasonably requires of him for the running of its Academies.
- 7.2A During the Pilot Period the Academy Trust shall provide such information and such access to its offices and employees as the Secretary of State may reasonably require for the purposes of evaluating the effectiveness of the pilot described in clause 1.3.

Access by the Secretary of State's Officers

- 7.3 The Academy Trust must allow Department for Education officials to enter any of its Academies at any reasonable time. All records, files and reports relating to the running of each Academy must be available to them at any reasonable time. Two Department for Education officials may attend and speak at any meetings of each Academy's Local Governing Body, of the Academy Trust's Board of Charity Trustees or any other meetings of the Charity Trustees of the Academy Trust, but will withdraw from any discussion of an 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.
- 7.4 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, any Local Governing Body or any committee to which the Board of Charity Trustees 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.
- 7.5 The Academy Trust may exclude from items provided under clause 7.4 any content relating to:
- a) a named teacher or other person employed, or proposed to be employed, at any Academy;
 - b) a named pupil or student at, or candidate for admission to, any Academy; and
 - c) any matter which the Academy Trust reasonably believes should remain confidential.

Information Sharing with Local Authorities – Statutory Responsibilities

7.5.a 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

7.6 A notice or communication given to a party in connection with this Agreement or any Supplemental 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 9.00am 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 working 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
St Joseph Catholic Multi Academy Trust	Chair of Trustees	Centre for Evangelisation, Croxteth Drive, Liverpool L17 1AA

Contractual

- 7.7 This Academy Trust cannot assign this Agreement.
- 7.8 Failure to exercise, or delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.
- 7.9 Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.
- 7.10 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.

7.11 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.

Annex

1. Agreed Draft Memorandum of Understanding for Catholic EdMAT
2. Agreed Draft Supplemental Agreement

AGREED DRAFT MEMORANDUM OF UNDERSTANDING

FOR CATHOLIC EDMAT

MEMORANDUM OF UNDERSTANDING (MoU)

1. The Secretary of State for Education (the **Secretary of State**), the Catholic Archdiocese of Liverpool and the Catholic Diocese of Shrewsbury (the **Dioceses**) and St Joseph's Catholic Academies Trust (the **Company**) a company incorporated in England and Wales, limited by guarantee with registered company number [tbc] (together **the parties**).
2. This memorandum of understanding (**MoU**) explains how the Secretary of State and the Company will cooperate with one another in respect of the piloting of an approach under which the Company will assume responsibility for higher risk academies in the Catholic Archdiocese of Liverpool and Catholic Diocese of Shrewsbury, as provided for in the master funding agreement between the parties, with a view to transferring the schools to permanent academy trusts. The Secretary of State and the Dioceses may mutually agree to the transfer of additional schools to the Company in accordance with the terms of the master funding agreement.
3. This MoU will have effect from the date of the master funding agreement with the Company until the end of the Pilot Period, as defined in the master funding agreement.

Principles for a co-operative relationship

4. The parties undertake to co-operate in a timely, reasonable and transparent manner, including in respect of considering any proposed amendment to this MoU. The parties have a mutual desire and commitment to ensure the success of the pilot as described below.

Aim of the pilot

5. Where a maintained school is rated inadequate by Ofsted, the Secretary of State is under a statutory duty to issue an Academy Order. The Secretary of State may also terminate academy arrangements with an existing academy trust where Ofsted has rated an academy inadequate. Typically, these academies are transferred to new academy trusts.

6. The Secretary of State is determined to ensure that the process of conversion or transfer is completed as quickly as possible, taking into account the specific circumstances of each case, so that underperforming schools and academies can benefit from the support of a strong academy trust.
7. The Secretary of State may also wish to secure the rapid transfer to the Company of academies from academy trusts which are subject to intervention or in financial difficulty, regardless of the performance of those academies, in order for action to be taken in relation to those academy trusts.
8. With this in mind, the Secretary of State will work with the Company to pilot an approach to securing support for Catholic schools and academies needing the support of a sponsor trust and which qualify to be transferred to the Company. The department refers to an academy trust performing this role as a Turnaround Trust. Schools and academies meeting agreed criteria will be selected for this pilot by way of mutual agreement between the Dioceses and a national panel acting on behalf of the DfE (the **panel**) (as per the section below entitled “Decision-making Panel”).
9. The Company’s role will be to improve outcomes for pupils and students in the schools and academies it takes on, and put in place strong systems for financial management and governance to improve their financial health with a view to facilitating their transfer to other academy trusts.
10. The Secretary of State has selected the Company for this role on the basis of the Company’s Turnaround Trust sponsor application, which the Secretary of State expects the Company to adhere to for the duration of the Pilot Period.

Decision-making panel

11. In order to expedite decision-making, the Secretary of State has put in place the panel responsible for oversight of the DfE’s relationship with the Company and the transfer of schools and academies to and from the Company.
12. The Regional Schools Commissioner (RSC) or members of their team will contact the Diocesan Schools Commissioner at the earliest opportunity to discuss an appropriate solution for Catholic schools meeting the Turnaround Trust eligibility criteria. Where the RSC and the Diocesan Schools Commissioner agree that a school is eligible and should transfer to the Company, the decision-making panel will decide whether to formally approve the Company as sponsor on behalf of the Secretary of State. The panel will also approve the funding and timescales associated with each conversion/transfer.

13. The panel comprises the National Schools Commissioner and the heads of School Systems, Academies and Reform Directorate and Academies and Maintained Schools Directorate in the DfE. The chair and directors of the Company and the Diocesan Schools Commissioner may make representations to the panel and may ask to discuss the arrangements for the transfer of selected schools and academies directly with the panel. The panel will consider any representations that the Company and Dioceses may make in line with the co-operative principles set out in paragraph 4 above (but any decision will ultimately be the panel's).

Set-up funding

14. Once it is fully operational, the Company will be funded on the same basis as other academy trusts and will derive its income from top-slicing the General Annual Grant (per-pupil funding for each academy). When schools and academies transfer to the Company, the Company will be eligible to apply for the same grants in relation to those schools and academies as other academy trusts. These may include grants which are paid at a fixed rate in specified circumstances and grants which are discretionary and calculated according to specific criteria. The Secretary of State will endeavour to keep the Company informed about the grants for which it is eligible to apply whenever a school or academy is proposed to transfer to the Company and when an academy is operated by the Company (where the Company may be eligible to apply in respect of that academy).
15. In addition, the Secretary of State has agreed to pay set-up grant funding up to a maximum of £1,250,000 to the Company so that it can build the necessary capacity to take on and transform schools and academies. This funding is required to enable the Company to undertake a range of activities such as employing core staff, including a CEO; procuring school improvement capacity; carrying out due diligence on the proposed schools and academies; and setting up management systems. The amount of funding and the grant conditions are set out in a separate grant funding agreement.
16. Due to their overarching role in relation to Catholic schools and their involvement in establishing the Company, the Dioceses will incur costs in relation to the setup of the Company. Costs incurred by the Dioceses should be invoiced to the Company. The Department is aware there may be activities that could be considered as Related Party Transactions (RPTs), which is described in more detail in the Academies Financial Handbook. Requirements in relation to RPTs are set out in the Grant Offer Letter.

Financial arrangements for schools transferring to the Trust

17. To facilitate the rapid transfer of schools to the Company, the panel has agreed the following principles that will apply to schools and academies identified for transfer.

- Subject to the usual business case process, maximum standard tariff sponsor/transfer grant will apply to the schools and academies in scope for the Company (i.e. £150k for a secondary school, £110k for primary).
- Maintained schools' deficits on conversion will be dealt with in the standard way for sponsored academies (i.e. to remain with the local authority) but, subject to the appropriate sign off by funding policy officials, there may be scope to consider varying this position in an exceptional case.
- Academies' deficits on transfer will be negotiated on a case by case basis in the normal way.
- Estimate funding will be negotiated on a case by case basis, based on an in-year adjustment and challenge process, where basic need does not apply and where there is evidence of significant popular growth either in an individual year or over a number of years.
- Deficit funding will be considered in relation to academies transferring to the Company on a case by case basis. Recoverable funding is the default position, but non-recoverable support will be considered where it is the best means to protect the interests of pupils. As set out in paragraph 26 below, the Secretary of State recognises that the Company will face additional challenges and increased risk as a result of the characteristics of the schools and academies it takes on and will take this into account when considering the basis on which support should be provided. Where funding is recoverable, the Secretary of State will agree the repayment terms with the Company and these may include deferring repayment until the academy is transferred to another academy trust, in which case the Secretary of State would recover the funding from the receiving academy trust. It is not envisaged that the Company will retain any deficit associated with a school transferring from the Company.
- Any restructuring costs (pre-academy statutory redundancy costs) will be handled in the normal way where there is a case for doing so.
- Normal capital grant allocation processes will be followed where possible.

Transfer of schools

18. The master funding agreement between the Secretary of State and the Company sets out the criteria according to which the Secretary of State will select schools and academies to transfer to the Company and will provide for the Company to take on these schools and academies. Schools meeting the criteria will be selected with the agreement of their Diocese.

19. The Secretary of State will endeavour to facilitate the transfer of schools and academies to the Company in a timely way, and where possible at the start of a term, in particular by providing the Company with relevant information held by the department about the schools and academies, and with information about the funding that the department is able to make available in relation to them. The Company will endeavour to expedite any due diligence, for example by building on information already provided by the Secretary of State, to facilitate the transfer. Where the Company, through its due diligence, identifies particular risks associated with transferring schools and academies the Secretary of State will consider providing written assurance, by way of a letter of comfort, about how it might support the Company in managing those risks, based on a shared risk approach with the Company.
20. The Secretary of State understands that, where possible, the Company will wish to work with the schools and academies to provide school improvement support prior to opening while negotiations for the conversion/transfer are on-going. Where a school or academy has been matched to the Company, the Company will be eligible to receive pre-opening funding to meet the costs of the Company providing school improvement interventions, as well as costs to the Company associated with the transfer of the school or academy, in line with normal procedures.
21. The funding agreement also provides for the Company to transfer academies to other academy trusts on the basis of mutual agreement between the Secretary of State and the relevant Diocese and in accordance with the principles set out in the Memorandum of Understanding between the Catholic Church and the Department for Education. The Secretary of State will endeavour to facilitate the transfer of academies onwards. In accordance with the form of the supplemental funding agreement, the Company is not obliged to transfer academies if to do so would result in the Company/its directors breaching the Company's articles or their legal duties.
22. The Secretary of State understands that the Company may wish to work with prospective receiving academy trusts in advance of transfer out from the Company in order to implement and expedite school improvement plans.
23. The Secretary of State notes that the directors will be bound by their duties under company and charity law to promote the success of the Company.

Financial management

24. As a condition of its funding agreement the Company must comply with the Academies Financial Handbook and relevant accounting requirements (the SORP and accounting direction).
25. In line with these requirements, the Company should set a balanced budget and have a reserves policy, having regard to relevant guidance issued by the Secretary of State, including advice on [operating an academy as a going concern](#).
26. The Secretary of State recognises that the Company will face additional challenges and increased risk because of the nature of the schools and academies expected to transfer to the Company, and the fact that under the terms of the pilot academies may be transferred from the Company to other academy trusts (subject to the terms of the funding documents) when they are financially stable. The Secretary of State will use reasonable endeavours to manage the transfer of schools and academies to and from the Company in a way which supports effective financial management. The Company should contact the Secretary of State at an early stage if it believes that there is a risk that its budget will go into deficit.
27. The Secretary of State would expect the Company to take measures to balance the budget but if it were agreed that all other steps had been taken the Secretary of State may look to support a transitional plan to enable the Company to continue to operate solvently. The Secretary of State would seek to ensure that the plan was sufficient to ensure the viability of the Company over the length of the Pilot Period. This might include additional financial support to reduce the Company's costs (for example the costs associated with inherited contractual commitments) or to increase the Company's income (for example where pupil numbers are below projected levels). This is on the understanding that no funding commitment is made or implied by the Secretary of State as a result of this paragraph, unless expressly made available at the relevant time.
28. [The Company's operating model, as set out in its Turnaround Trust sponsor application, envisages the purchase of services at cost from other academy trusts which may constitute related party transactions. The Secretary of State will put in place a process to expedite requests from the Company for approval for such transactions, for example by considering them in batches rather than individually.]²
29. Nothing in this MoU affects the Secretary of State's right to issue a Financial Notice to Improve to the Company in the event that the Company fails to comply with the requirements of the Academies Financial Handbook.

Evaluation and KPIs

² If relevant

30. The Secretary of State will evaluate the pilot. The Company will provide the Secretary of State's officers with any information that might reasonably be required for the purpose of the evaluation. The Company will also facilitate reasonable access by the Secretary of State's officers to its academies where this is necessary to enable fieldwork to be conducted.
31. The purpose of the pilot is to test the approach set out in paragraphs 5 to 8 above. The evaluation will accordingly consider the time and cost associated with transfers to and from the Company and the value for money offered by the approach. To inform this consideration, the evaluation will assess the performance of the Company against the specific aims of the pilot as set out in paragraphs 5 - 8 and the performance of its academies in educational and financial terms against key performance indicators (KPIs) to be mutually agreed by the Secretary of State and the Company and included in the Supplemental Funding Agreement for each academy.
32. A formal evaluation of the pilot will take place before the end of the initial two-year Pilot Period, with interim evaluation points at 6 months and 12 months from the date of signing the funding agreement. The evaluation will consider a range of quantitative and qualitative data including, but not exhaustively, published performance data and findings from qualitative research as set out below. The evaluation will draw on the views of all parties including the Company, the Dioceses and officials acting on behalf of the Secretary of State.

Qualitative research

33. The research will also involve fieldwork including (but not limited to) the following elements:
- Discussions with senior leaders involved in implementing the school improvement package and with school improvement providers to understand what actions the Company will take to stabilise and improve its academies.
 - A formative assessment of delivery at regular (to-be-determined) intervals, collecting data on costs (for example running costs, direct interventions, subcontracting), improvement practices being implemented, and emerging views from schools receiving support on the impact of support programmes.
 - Summative focus groups with senior leaders in the Company's academies, the Company's staff, and School Improvement (SI) providers

- The operation of the pilot will be reviewed continuously with a view to informing thinking about the scope to apply the approach, or elements of it, more widely. The Secretary of State may disseminate emerging lessons from the pilot. The Secretary of State will agree the content and handling of any public communications relating to the Company in the context of the pilot with the Parties.

End of the pilot

34. At the end of the Pilot Period the Secretary of State will evaluate the pilot and determine whether to establish an enduring process that will facilitate the set-up of Catholic Turnaround Trusts on a similar basis to support schools in other dioceses with particular need.

General

35. This MoU is intended to establish principles for co-operation between the Secretary of State and the Company during the Pilot Period. For the avoidance of doubt, this MoU does not supersede or alter any provision of the master funding agreement made between the Secretary of State and the Company, the set up grant funding agreement and/or any supplemental funding agreements made/novated in respect of individual academies transferring to the Trust.

36. This MoU is not intended to create legal or binding obligations, and no legal obligations or legal rights shall arise between the Secretary of State, the Dioceses and the Company from this MoU.

37. The Secretary of State (or representatives on his behalf) will meet with the Dioceses and the Company from time to time to discuss and review the operation of this MoU. During the Pilot Period the Secretary of State's representatives will meet the chair of the Company and Diocesan representatives, and any other representatives of the Company who the chair might nominate, to review the operation of the pilot.

Signed by:

.....

XXXXXXXXXXXXXXXXXX

On behalf of the Secretary of State for Education

Signed by:

.....

XXXXXX

(Position)

On behalf of the Archdiocese of Liverpool

Signed by:

.....

XXXXXX

(Position)

On behalf of the Diocese of Shrewsbury

Signed by:

.....

XXXXXX

Chair

On behalf of the Company



Department
for Education

Mainstream academy and free school: supplemental funding agreement

December 2020 v7

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SUMMARY SHEET**Information about the Academy:**

Name of Academy Trust	
Company number	
Date of Master Funding Agreement	
Name of academy	
Opening date	
Type of academy (indicate whether academy or free school)	
Religious designation	
Wholly or partly selective	
Name of predecessor school (where applicable)	
Capacity number (of statutory school age places) (if the Academy has a nursery provision, please provide a breakdown of capacity for nursery pupils and statutory school age places)	
Age range (including nursery provision where the nursery is part of the school)	
Number of sixth form places	
Number of boarding places	
SEN unit / Resource provision	
Land arrangements (Version 1-8 or other)	
Name of Academy Trust	
Academy and title number of Land (and Temporary Site)	[Temporary Site: land at xxxxx] [Permanent Site: xxxxx]

Please confirm which clause variations have been applied or marked as ‘Not used’

Clause No.	Descriptor	Applied	Not used
1.I	Only applies to free schools and new provision academies		
2.A.1	Clause applies where an academy was previously a VC or foundation school designated with a religious character		
2.C, 2.D	Only applies where the academy has an SEN unit or Resourced Provision		
2.E	Only applies where there was a predecessor independent school		
2.E.1	Only applies to free Schools with nursery provision		
2.G	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		
2.M	Clause applies only to academies and free schools designated with a religious character		
2.N	Clause applies only to academies that were formerly wholly selective grammar schools		
2.O	Clause applies only to academies that were formerly partially selective grammar schools		
2.T	Clause applies to free schools and new provision academies designated with a religious character		
2.W	Clause only applies where the academy is designated with a religious character but was not previously a VC school or foundation school designated with a religious character (in which case use clause 2.Y instead). Also use 2.W where an academy was previously a VC school but has gone through a significant change		

Clause No.	Descriptor	Applied	Not used
	process to adopt VA characteristics in parallel with converting to an academy		
2.X	Clause only applies where the academy has not been designated with a religious character		
2.Y	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.W. 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, use clause 2.W instead.		
2.Yc)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than ‘Christian’		
3.A – 3.F	Option 1 applies to converter and sponsored academies: if used delete option 2		
3.A – 3.F	Option 2 applies to free schools and new provision academies: if used delete option 1		
3.H	Clause relating to Start-up only applies in some cases (does not apply to academy converters)		
3.I.1	Only applies to Free schools with nursery provision		
3.J	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		
3.K	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		
5.G.1	Clause applies only to a boarding academy/free school.		
5.I	Clause only applies to sponsored academies		

Clause No.	Descriptor	Applied	Not used
5.K	Clause applies to free schools and may be applied to new provision academies		
5.L	Clause applies to free schools and may be applied to new provision academies		
5.M	Clause applies to free schools and may be applied to new provision academies		
5.N	Clause applies to free schools and may be applied to new provision academies		
5.O	Clause applies to free schools and may be applied to new provision academies		
6.H	Clause only applies to schools which are designated with a Church of England or Roman Catholic character		

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

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

Descriptor	Clause No.	Applied	Not used
Higher Risk Catholic Academy Clauses			
Additional definition relating to Higher Risk Catholic Academy		X	
Transfer out of a Higher Risk Catholic Academy		X	
Termination relation to a Higher Risk Catholic Academy		X	

1. **ESTABLISHING THE ACADEMY**

- 1.A This Agreement made between the Secretary of State for Education and [INSERT NAME OF ACADEMY TRUST] is supplemental to the master funding agreement made between the same parties and dated [INSERT] (the “**Master Agreement**”).

Definitions and interpretation

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

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

“The **Academy**” means the [INSERT] Academy.

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

“**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.

“**National Minimum Standards**” *[This definition should be removed if the academy or free school does not provide boarding]*³ means the National Minimum Standards for Boarding Schools published by the Secretary of State under section 87C(1) of the Children Act 1989 as amended by the Care Standards Act 2000.

³ Throughout document remove instructions set out in bold, italics

"Pilot Period" means either a period of two years commencing on the date of signing the Master Funding Agreement or, in the event that a Pilot Period Extension Notice is served, a period of three years commencing from the date of signing the Master Funding Agreement.

"Pilot Period Extension Notice" means a notice served under clause 1.32 of the Master Funding Agreement confirming that the duration of the Pilot Period will be extended to three years.

"SEN" means special educational needs and has the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

"Start-Up Period" [*This definition should be removed if all pupil cohorts relevant to the age-range of the academy will have some pupils present on the academy opening date. It will normally apply to free schools with the exception of free schools which had previously been independent schools who are not expanding their capacity and will not be in receipt of start-up/post opening grant*] means up to the first [X] Academy Financial Years of being open. [“X” is normally defined as 7 for primary, secondary with post-16 provision or all-through schools; or 5 for secondary schools.

"Supplemental Special Provisions" means clauses 1.J to 1.P and 5.1A to 5.1B.

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

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

The Academy

1.F The Academy is a Higher Risk Catholic Academy as defined in clause 1.5 of

the Master Agreement.

1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.

1.H The Academy Trust will open the Academy on [INSERT DATE].

1.I **[This clause applies only to free schools and new provision academies – otherwise mark clause 1.I as ‘Not used’]** The Academy Trust must ensure that so far as is reasonably practicable and consistent with [clause 2.T and] clause [2.W]/[2.X]/[2.Y]**[Select as appropriate]** of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

[Where the governance arrangements of the academy differ from the MAT it is joining, an extra clause must be added here (at 1.J) to protect the governance of the academy, through a Local Governing Body. For example:

- ***where a school designated with a religious character that is not a voluntary controlled (VC) or a foundation school is joining a MAT that does not have Church majority governance; or***
- ***where a school without a religious designation is joining a MAT with Church majority or minority governance; or***
- ***where a school designated with a religious character – that is a voluntary controlled (VC) or a foundation school is joining a MAT that does not have at least Church minority governance;***

In the case of schools designated with a religious character, the Local

Governing Body should be set up in line with the school's Trust Deed]

- 1.J The Supplemental Special Provisions shall only apply:
- a) during the Pilot Period; or
 - b) if the Secretary of State has notified the Academy Trust in accordance with clause 1.34b) or clause 1.35 of the Master Agreement (in each case, a **Continuance Notice is issued**), for the duration of the Master Agreement.
- 1.K Subject to clause 1.J the Academy Trust undertakes to use its reasonable endeavours to achieve the key performance indicators set out in clause 1.N
- 1.L (i) if all the key performance indicators in clause 1.N are met, subject to clause 1.J or (ii) following expiry of the Pilot Period unless a Continuance Notice has been served, the Secretary of State may serve a written notice on the Academy Trust requiring transfer of the Higher Risk Catholic Academy from the Academy Trust to another Catholic academy trust (a “**Transfer Notice**”).
- 1.M From receipt of a Transfer Notice, the Academy Trust undertakes, subject to clauses 1.J and 1.O to transfer the Higher Risk Catholic Academy to the Catholic academy trust identified in the Transfer Notice (the “**Incoming Academy Trust**”) pursuant to and in accordance with the following requirements:
- a) the deed of novation and variation to effect the transfer of the Supplemental Agreement for the Higher Risk Catholic Academy will be in substantially the relevant model form issued by the Secretary of State from time to time, subject to inclusion of the variations referred to in Schedule 1;
 - b) the Academy Trust will enter into such deed of novation and variation of the Supplemental Agreement within 3 months (or such longer reasonable period as the Secretary of State may agree) from receipt of a Transfer Notice;
 - c) the Academy Trust will use its best endeavours to transfer the relevant assets and liabilities relating to the Higher Risk Catholic Academy to the Incoming Academy Trust; and

- d) the Academy Trust will enter into a transfer agreement with the Incoming Academy Trust to transfer the relevant assets and liabilities concerning the Higher Risk Catholic Academy to the Incoming Academy Trust in substantially the relevant model form issued by the Secretary of State from time to time.

1.N For the purposes of clauses 1.K and 1.L the key performance indicators are:

- a) [TBC];
- b) [TBC]; and
- c) [TBC].

1.O The Academy Trust shall not be required to transfer out a Higher Risk Catholic Academy to another Catholic academy trust pursuant to clause 1.M if it demonstrates to the Secretary of State's satisfaction that to do so would cause:

- a) the Academy Trust to be in breach of the Articles; or
- b) the Charity Trustees to be in breach of their duties.

1.P Notwithstanding any of the provisions of this Agreement, the Secretary of State and the Academy Trust may also agree that an Academy be transferred to another academy trust.

2. **RUNNING OF THE ACADEMY**

Teachers and staff

2.A Subject to clause 2.A.2 and 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 [***This clause applies where an academy was previously a VC school or foundation school designated with a religious character – otherwise mark clause 2.A.1 as 'Not used'***]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.

2.A.2 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by 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.

Pupils

- 2.B The planned capacity of the Academy is [insert] and the age range is [insert], [plus nursery provision of [insert] places] [and] [including a sixth form of [insert] places][and][including [insert] boarding places][which for the avoidance of doubt includes pupils with designated places pursuant to clause 2.C]. 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.]

SEN Unit or Resourced Provision

[Clauses 2.C and 2.D only apply where the academy has an SEN unit or Resourced Provision – for all other cases, these clauses should be marked 'Not used']

- 2.C The Academy must operate designated places reserved for pupils with SEN (SEN Unit or Resourced Provision) with up to [insert] planned places for pupils with [insert SEN category] in the age range [insert]. ***[If this clause does not apply, mark clause 2.C as 'Not used']***
- 2.D 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. ***[If this clause does not apply, mark clause 2.D as ‘Not used’]***

Charging

2.E [Not Used]

2.E.1 **[This clause only applies to Free schools with nursery provision]** Clause 2.16 of the Master Funding Agreement does not prevent the Academy Trust charging fees for nursery provisions outside the Funded Hours.

Admissions

2.F Subject to clauses 2.K– 2.M 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.G ***[This clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies – in these cases mark clause 2.G as ‘Not used’]*** 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.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I [Not used]

2.J [Not used]

2.K [Not used]

2.L The Secretary of State may:

- a) direct the Academy Trust to admit a named pupil to the Academy:
 - i. following an application from 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.M ***[This clause only applies to academies and free schools designated with a religious character - otherwise mark clause 2.M as ‘Not used’. Where this clause is used, please complete the relevant religious character and religious authority (where applicable) in the []s marked [insert] and [NAME] below]*** The Academy is an Academy designated with a [insert] religious character. The relevant religious authority is [NAME].

2.N ***[This clause only applies to academies that were formerly wholly selective schools - otherwise mark clause 2.N as ‘Not used’]***Where the Academy is a former maintained grammar school designated as such under section 104 of the School Standards and Framework Act 1998 and the Education (Grammar School Designation) Order 1998, then it may continue to select its intake by reference to ability. Clause 8 sets out the procedures for removing selective arrangements.

2.O ***[This clause only applies to academies that were formerly partially selective schools – otherwise mark clause 2.O as ‘Not used’]***Where the Academy is a former maintained school with pre-existing partially selective

admissions permitted by section 100 of the School Standards and Framework Act 1998, then it may retain such admissions so long as the proportion of selective admissions remains at the level at which they were previously set and the basis of selection is unchanged (unless selection is removed entirely). The Academy's partially selective proportions are [X]⁴.

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

2.P.1 [***This clause only applies to free schools or academy converter schools where there was a predecessor maintained school, in all other cases mark clause 2.P.1 as 'Not used'***] The Academy Trust will treat any decision of an admissions appeal panel constituted further to arrangements made by the admission authority of a Predecessor School under section 94 of the School Standards and Framework Act 1998 as binding on the Academy Trust, as though the Academy Trust had made the decision subject to the appeal.

2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a

⁴ This must be the proportions in place at the beginning of the 1997-98 school year and which have remained unchanged ever since, or any lower proportion determined since 1997-1998.

determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

- 2.S The Office of the Schools Adjudicator (“OSA”) will consider objections to the Academy’s admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this funding agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy’s admission arrangements, that objections should be submitted to the OSA. The OSA’s determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator’s decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.
- 2.T ***[This clause only applies to free schools and new provision academies designated with a religious character – otherwise mark clause 2.T as ‘Not used’]***The Academy Trust must ensure that the Academy adopts admission criteria that provide that, if oversubscribed, at least 50% of its places available each year will be allocated without reference to faith-based admission criteria.

Curriculum

- 2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to “religious education” and “religious worship” in that section were references to the religious education and religious worship provided by the Academy in accordance with clause [2.W]/[2.X]/[2.Y]***[select as appropriate]***.

[Clauses 2.W – 2.Y reflect the requirements for religious education and daily collective worship – mark the clauses that do not apply as ‘Not used’]

2.W [This clause applies where an academy is designated with a religious character but was not previously a VC school or a foundation school designated with a religious character. Please also use this clause if 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] Subject to clause 2.V, **where the academy is 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 tenets of the Academy’s specified religion or religious denomination. This is subject to paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998, which applies as if the Academy were a voluntary aided school with a religious character;
- b) the Academy Trust must comply with 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 Academy’s specified religion or religious denomination;
- c) the Academy Trust must 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 practices of its specific religion or religious denomination are inspected. The inspection must be conducted by a person chosen by the Academy Trust, and the Academy Trust must ensure that the inspection complies with the statutory provisions and regulations which would apply if the Academy were a foundation or voluntary school designated as having

a religious character.

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

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community 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.Y ***[This clause only applies where an academy was previously a VC school or foundation school designated with a religious character. If 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 then please use clause 2.W instead]*** Subject to clause 2.V, the requirements for religious education and collective worship are as follows:

- a) subject to paragraph 3 of Schedule 19 to the School Standards and Framework Act 1998, which will apply as if the Academy were a foundation school or voluntary controlled school with a religious character, 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;
- b) the Academy Trust must comply with 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 Academy’s specified religion or religious denomination;

- c) ***[Additional sub-clause to be added if the academy is designated with a denominational religious character - CE etc. rather than ‘Christian’]*** the Academy Trust must ensure that the quality of the religious education given to pupils at the Academy and the contents of the Academy’s collective worship, given in accordance with the tenets and practices of its specific religion or religious denomination, is inspected. The inspection must be conducted by a person chosen by the Academy Trust and the Academy Trust must secure that the inspection complies with statutory provisions and regulations which would apply if the Academy were a foundation or voluntary school designated as having a religious character.

3. GRANT FUNDING

Calculation of GAG

[Option 1 for converter and sponsored academies: use these clauses 3.A-3.F and delete option 2]

3A-3D. Not used.

3.E 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.F For Academy Financial Years after that referred to in clause 3.E, 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.

[Option 2 for free schools and new provision academies: use these clauses 3.A-3.F and delete option 1]

- 3.A Subject to clause 3.C, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 3.B.
- 3.B The Secretary of State will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the purposes of determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.
- 3.C In the Academy Financial Year which immediately follows the Academy Financial Year in which all planned year groups will be present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present), the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.B, but in that and all following Academy Financial Years will be determined in accordance with clause 3.F.
- 3.D For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 3.A and 3.B, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Census for the relevant month (determined at the Secretary of State's discretion) for the Academy Financial Year in question as a means of determining pupil numbers. The additional or clawed-back grant will be only the amount relevant to the number of pupils above or below that estimate.
- 3.E Not used

- 3.F For Academy Financial Years which immediately follow the Academy Financial Year in which all planned year groups will be present at the Academy, 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

[End of options 1 and 2]

- 3.G The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.B. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.

- 3.H ***[This clause should be removed for academy converters. If removed, mark clause 3.H 'Not used']*** The Secretary of State may pay post opening grant to the Academy Trust during the Start-Up Period, in order to allow the Academy to:
- a) purchase a basic stock of teaching and learning materials (including library books, textbooks, software, stationery, science equipment and equipment for physical education) and other consumable materials; and
 - b) meet the costs associated with the recruitment and induction of additional staff.

After the Start-Up Period these costs will be met through the ordinary GAG. The post opening grant allocation for the whole of the start-up period shall be

specified prior to the academy's opening

- 3.I The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, or the Master Agreement is otherwise terminated, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.
- 3.I.1. **[This clause only applies to Free schools with nursery provision]** For the avoidance of doubt, the pupil number count for the purposes of determining GAG excludes nursery provision pupils. Clauses 3.A-3.I must be read with this exclusion in mind.

Other relevant funding

- 3.J **[This clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans – otherwise mark clause 3.J as 'Not used']** The Academy Trust may apply to the Secretary of State for financial assistance in relation to proposed redundancies at the Academy. In response to such an application, the Secretary of State may at his discretion agree to 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 may agree to meet the costs of an employee's prior eligible service, being service before the Academy opened, but the Academy Trust must meet the costs of service after the Academy opened. The Secretary of State's financial assistance in this respect will only be available in the first two years after the Academy opens.
- 3.K **[This clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies – in these cases mark clause 3.K as 'Not used']** 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.

Carrying forward of funds

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

4. LAND

[The land clauses deal with the Academy Trust's obligations in respect of the academy site, and with protecting the public investment in the land used for the academy.

Other clauses and definitions may need to be inserted into this Agreement, depending on the specific land arrangements for the school site; for example, if the academy is to open on a temporary site before moving to its permanent site, or if any of the land is unregistered.

Choose from the options below the version of the land clauses that seems most appropriate when considered from the viewpoint of initial establishment of the academy or free school, and delete the other versions. More than one version may be required if different parts of the site are in different ownership.

Is the academy site being newly provided - e.g. by the Department for Education (ESFA)?

No (e.g. because a maintained school is converting to an academy and either the governing body or the local authority holds the freehold to its site:

Use version 1 if, before conversion, the governing body holds the freehold, which is to be transferred on conversion to the academy trust.

Use Version 2 if, before conversion, the governing body holds the freehold which is to be transferred on conversion to the local authority, who will then grant a lease to the academy trust. Use version 2 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. (Use version 7 if a new school is being established under the presumption route and a local authority is providing the land).

Use version 3 if the academy's existing site is to be made available under a church supplemental agreement or lease from site trustees.

Use both version 2 and version 3 if the academy's existing site is to be occupied partly under a lease provided by the LA or a third party landlord and partly under a church supplemental agreement or a lease provided by site trustees.

Yes (e.g. because the academy will be or is a free school or a new school established under the presumption route):

Use version 6 if the Secretary of State is not the landlord and is taking a legal charge over the new site.

Use version 7 if the Secretary of State is neither the landlord nor taking a legal charge over the new site e.g. if a new school is being established under the presumption route and a local authority is providing the land.

Use version 8 if the Secretary of State is the landlord – i.e. granting the lease.]

[Version 1: to be used if, before conversion, the governing body holds the freehold, which is to be transferred on conversion to the academy trust]

[If as a result of an academy conversion or trust-to-trust transfer a legal charge is required then please request legal assistance to insert appropriate provisions.]

“Land” means the freehold land at [ADDRESS], being [part of] the land registered with title number [●], which is to be the permanent site of the Academy.

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

Restrictions on Land transfer

4.A 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

4.B 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.

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

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

in respect of all or part of the Land 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 for community, fundraising or recreational purposes ancillary to educational services and where no relationship of landlord and tenant arises as a result of such occupation.

Option

- 4.D The Academy Trust and the Secretary accepts an option (the “**Option**”) to acquire all or part of the Land at nil consideration. The Secretary of State may exercise the Option in writing;
- a) if this Funding Agreement is terminated for any reason;
 - b) at any time on or after the issue of a Termination Notice;
 - c) if, under clause 4.H, the Academy Trust and the Secretary of State agree that part of the Land should be demised or leased to another academy trust; or
 - d) if, under clause 4.J, the Academy Trust cannot use all or part of the Land as the permanent site of the Academy.

4.D.1 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

- 4.E 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

4.F If the Academy Trust receives a Property Notice, it must:

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

Sharing the Land

4.G 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 leased 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.

4.H To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or leased in accordance with clause 4.G, the Academy Trust must use its best endeavours to procure all necessary consents 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 that part of 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.

4.I For the purposes of clause 4.G:

- 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.

- 4.J If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that he intends to exercise the Option to transfer all or part of the Land for nil consideration to himself or his nominee.
- 4.K 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 4.D. Any such notice is without prejudice to his right to exercise any other rights available to him.

[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]

(Use version 7 if a new school is being established under the presumption route and a local authority is providing the land.) [If as a result of an academy conversion or trust-to-trust transfer a legal charge is required then please request legal assistance to insert appropriate provisions].

“Land” means the land at [●], being [part of] the land registered with title number [●] 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

- 4.A 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

- 4.B 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.
- 4.C The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.
- 4.D 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

4.E 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 4.K, 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 4.M, the Academy Trust cannot use all or part of the Land as the permanent site of the Academy.

4.E.1 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

4.F 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

4.G 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

4.H 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.

- 4.I After notifying the Secretary of State under clause 4.H, 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

- 4.J 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.
- 4.K 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 4.J, 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.

4.L For the purposes of clause 4.J:

- 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.

4.M 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.

4.N 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 4.E. Any such notice is without prejudice to his right to exercise any other rights available to him.

[Version 3: existing site to be held under church supplemental agreement or lease from site trustees]

[If a church supplemental agreement:-]

The parties rights and obligations in respect of the Land are set out in the Church Supplemental Agreement dated [DATE] and made between (1) the Secretary of State; (2) the Academy Trust; (3) [SITE TRUSTEES OR FOUNDATION]; and (4) [RELIGIOUS AUTHORITY such as diocesan board of education or Bishop]. For the

purposes of this clause, the Land has the meaning given in the Church Supplemental Agreement.

[If a lease:-]

The parties' rights and obligations in respect of the Land are set out in the lease dated [DATE] and made between (1) the Academy Trust and (2) [SITE TRUSTEES OR FOUNDATION] [Include any other parties as appropriate]. For the purposes of this clause, the Land has the meaning given in the lease.

[Version 4: NO LONGER USED]

[Version 5: NO LONGER USED]

[Version 6: new leasehold site provided by Department for Education (ESFA) with a legal charge in favour of the Secretary of State]

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

"Discharge Process" means the removal of:

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

"Permanent Land" means the land at [●], being [part of] the land registered with title number [●] and demised by the Permanent Lease.

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

"Land Value" means, at any time:

- i. where the Permanent Land has been disposed of as a result of the enforcement of the Legal Charge by the Secretary of State, the

proceeds of that disposal after payment of the seller's necessary and reasonable costs in connection with the disposal; or

- ii. in any other case, the Market Value.

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

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

"Property Notice" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Permanent Landlord [and/or the Temporary Landlord unless the Temporary Landlord is the Secretary of State for Housing, Communities and Local Government]) which materially affects the Academy Trust's ability to use the Permanent Land [or the Temporary Land] for the purposes of the Academy or any correspondence that affects the extent of the Permanent Land [or the Temporary Land].

["Temporary Land"] means the land at [*insert address of temporary site*] as edged red on the plan attached to this Agreement at Annex [] and demised or to be demised by the Temporary Lease.]

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

Debt

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

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

Restrictions on Permanent Land transfer

4.C The Academy Trust must:

- a) apply to the Land Registry using form RX1 for the following restrictions (each a “**Restriction**”) to be entered in the proprietorship register for the Permanent Land by the following deadlines:
 - i. within 28 days after acquiring the Permanent 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”; and
 - iii. within 28 days after entering into the Legal Charge:

“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date of charge] in favour of The Secretary of State for Education referred to in the charges register or by its conveyancer”;
- b) take any further steps required to ensure that each Restriction is entered on the proprietorship register of the Academy Trust's title;
- c) promptly confirm to the Secretary of State when each Restriction has been registered;
- d) if it has not registered each Restriction, allow the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove a Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

Obligations of the Academy Trust

- 4.D The Academy Trust must keep the Permanent Land [and the Temporary Land] clean and tidy and make good any damage or deterioration to the

Permanent Land [and the Temporary Land]. The Academy Trust must not do anything to lessen the value or marketability of the Permanent Land [or the Temporary Land] without the Secretary of State's consent. The Academy Trust must comply with the Permanent Lease [and the Temporary Lease] and promptly enforce its rights against the Landlord [and, where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, the Temporary Landlord].

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

- a) terminate, renew, vary, surrender, dispose of or agree any revised rent under the Permanent Lease [or, where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, the Temporary Lease]; or
- 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 Permanent Land [or the Temporary Land]

Provided that that the Academy Trust may grant a licence or share occupation of part of the Permanent 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 Permanent Lease [or the Temporary Lease] and where no relationship of landlord and tenant arises as a result of such occupation.

4.F The Academy Trust must obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Permanent Land [or the Temporary Land].

4.G If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Permanent Lease [or the Temporary 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.

- 4.H After notifying the Secretary of State under clause 4.G, 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.
- 4.I If the Academy Trust has not entered into the Permanent Lease by [DATE] [or the Temporary Lease by [DATE], the Secretary of State may serve a Termination Notice.
- 4.J If any part of the property situated on the Permanent Land [or the Temporary Land] is damaged or destroyed by an insured risk and the Academy Trust receives the proceeds of insurance but it cannot apply those proceeds to rebuild or reinstate the property because it is impossible or impractical to do so, then the Academy Trust shall pay the insurance proceeds to the Secretary of State in full.

Property notices

- 4.K If the Academy Trust receives a Property Notice, it must:
- a) send a copy of it [(where not issued by the Secretary of State for Housing, Communities and Local Government in his capacity as the Temporary Landlord)] to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
 - b) promptly give the Secretary of State all the information he asks for about it;

- c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

Option

4.L The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire the Permanent 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 any of the conditions (a) to (c) in clause 4.P applies; or
- d) if the Academy Trust cannot use all or part of the Permanent Land as the permanent site of the Academy under clause 4.O.

4.L.1 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

4.M The Academy Trust:

- a) must, within 14 days after acquiring the Permanent 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 Permanent Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Legal Charge

4.N The Academy Trust must

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

and promptly confirming to the Secretary of State when this has been done; and

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

Permanent Land not used for the purposes of the academy

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

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

Sharing the Permanent Land

4.P If:

- a) the Academy does not reach its planned capacity, as stated in clause 2.10, within [●] Academy Financial Years; or
- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 7.1; or
- c) the Secretary of State considers that not all the Permanent Land is needed for the operation of the Academy at planned capacity,

then:

- i. the Academy Trust must share occupation of the Permanent Land

with such other academy trust as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose provided that 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; or

- ii. the Academy Trust must sell the Permanent Land as required by the Secretary of State and account for the sale proceeds to the Secretary of State in payment of the Debt, after which the Secretary of State will carry out the Discharge Process over the Permanent Land.

Exercise of Rights

4.Q On termination of this Agreement, the Secretary of State may give notice that he intends to exercise his rights under clauses 4.L, 7.30 or 7.31 or under the Legal Charge. Any such notice must state which clause of this Agreement the Secretary of State intends to exercise, and is without prejudice to his right to exercise any other rights available to him.

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

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State;
- b) the Academy Trust will be deemed to have paid to the Secretary of State a proportion of the proceeds from the sale of the Permanent Land under clause 7.30(b); and
- c) the Secretary of State will carry out the Discharge Process;

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

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

- b) the Academy Trust will be deemed to have paid to the Secretary of State a proportion of the proceeds from the sale of the Permanent Land as required under clause 4.29 of the Master FA; and
 - c) the Secretary of State will carry out the Discharge Process.
- 4.T If, on termination of this Agreement, the Secretary of State exercises his rights under clause 7.30, then:
 - a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State; and
 - b) the Secretary of State will carry out the Discharge Process.
- 4.U If, on termination of this Agreement, the Secretary of State agrees under clause 7.31 that the Academy Trust may invest the proceeds from the sale of the Permanent Land for its charitable objects, or directs the Academy Trust to pay all or part of the sale proceeds to the relevant LA, then:
 - a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State; and
 - b) the Secretary of State will carry out the Discharge Process.
- 4.V If the Academy Trust applies to the Secretary of State for consent to sell all or part of the Permanent Land, and if the Secretary of State agrees that the Permanent Land is no longer needed or cannot be used for the purposes of the Academy, he may:
 - a) exercise the Option; or
 - b) consent to the sale subject to one or more of the following conditions:
 - i. that (notwithstanding clause 4.29 of the Master FA) the Academy Trust pays the Debt (or, if it proposes to sell only part of the Permanent Land, pays the Market Value of the part sold) to the Secretary of State;
 - ii. that pursuant to clause 4.29 of the Master FA, the Academy Trust keeps some or all of the sale proceeds for its charitable purposes,

accounting to the Secretary of State for the remainder; or

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

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

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

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

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

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

4.Y Not used.

Payment of Debt

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

4.AA If the Academy Trust:

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

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

[Version 7: new leasehold site provided by Department for Education (ESFA) without a legal charge where the Secretary of State is not the landlord - use this version if a new school is being established under the presumption route and a local authority is providing the land]

“Permanent Land” means the land at [●], being [part of] the land registered with title number [●] and demised by the Permanent Lease.

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

“Property Notice” means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Permanent Landlord [and/or the Temporary Landlord unless the Temporary Landlord is the Secretary of State for Housing, Communities and Local Government]) which materially affects the Academy Trust’s ability to use the Permanent Land [or the Temporary Land] for the purposes of the Academy or any correspondence that affects the extent of the Permanent Land [or the Temporary Land].

["Temporary Land"] means the land at [*insert address of temporary site*] as edged red on the plan attached to this Agreement at Annex [] and demised or to be demised by the Temporary Lease.]

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

Restrictions on Permanent Land transfer

4.A The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Permanent Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Permanent 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 Permanent 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 required to ensure that the Restriction is entered on the proprietorship register of the Academy Trust’s title;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, allow the Secretary of State to do so in its place; and
- e) not, without the Secretary of State’s consent, apply to disapply, modify, cancel or remove 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

4.B The Academy Trust must keep the Permanent Land [and the Temporary Land] clean and tidy and make good any damage or deterioration to the Permanent Land [and the Temporary Land]. The Academy Trust must not do anything to lessen the value or marketability of the Permanent Land [or the Temporary Land] without the Secretary of State’s consent. The Academy Trust must comply with the Permanent Lease [and the Temporary Lease] and promptly enforce its rights against the Permanent Landlord [and, where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, the Temporary Landlord].

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

- a) terminate, renew, vary, surrender, dispose of or agree any revised rent under the Permanent Lease [or, where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, the Temporary Lease]; or

- 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 Permanent Land [or the Temporary Land]
 Provided that that the Academy Trust may grant a licence or share occupation of part of the Permanent 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 Permanent Lease [or the Temporary Lease] and where no relationship of landlord and tenant arises as a result of such occupation.

- 4.D The Academy Trust must obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Permanent Land [or the Temporary Land].
- 4.E If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Permanent Lease [or the Temporary 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.
- 4.F After notifying the Secretary of State under clause 4.E, 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.

- 4.G If the Academy Trust has not entered into the Permanent Lease by [DATE] [or the Temporary Lease by [DATE]], the Secretary of State may serve a Termination Notice.
- 4.H If any part of the property situated on the Permanent Land [or the Temporary Land] is damaged or destroyed by an insured risk and the Academy Trust receives the proceeds of insurance but it cannot apply those proceeds to rebuild or reinstate the property because it is impossible or impractical to do so, then the Academy Trust shall pay the insurance proceeds to the Secretary of State in full.

Property notices

- 4.I If the Academy Trust receives a Property Notice, it must:
- a) send a copy of it [(where not issued by the Secretary of State for Housing, Communities and Local Government in his capacity as the Temporary Landlord)] to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
 - b) promptly give the Secretary of State all the information he asks for about it;
 - c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
 - d) use its best endeavours to help the Secretary of State in connection with it.

Option

- 4.J The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire the Permanent 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 any of the conditions (a) to (c) in clause 4.M applies; or

- d) if the Academy Trust cannot use all or part of the Permanent Land as the permanent site of the Academy under clause 4.L.

4.J.1 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

4.K The Academy Trust:

- a) must, within 14 days after acquiring the Permanent 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 Permanent Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Permanent Land not used for the purposes of the academy

- 4.L If the Academy Trust cannot use all or part of the Permanent 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 Permanent Land for nil consideration to himself or his nominee.

Sharing the Permanent Land

- 4.M If:
- a) the Academy does not reach its planned capacity, as stated in clause 2.10, within [●] Academy Financial Years or
 - b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 7.1 or
 - c) the Secretary of State considers that not all the Permanent Land is needed for the operation of the Academy at planned capacity,

the Academy Trust must share occupation of the Permanent Land with such other Academy as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose provided that 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.

Exercise of Rights

- 4.N 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 4.J or 4.K. Any such notice is without prejudice to his right to exercise any other rights available to him.

[Version 8: new leasehold site provided by Department for Education where the Secretary of State is the landlord]

“Permanent Land” means the land at [●], being [part of] the land registered with title number [●] and demised by the Permanent Lease.

“Permanent Lease” means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and the Secretary of State for Housing, Communities and Local Government (**the “Permanent Landlord”**) under which the Academy Trust derives title or will derive title to the Permanent Land.

“Property Notice” means any order, notice, proposal, demand or other requirement issued by any competent authority [(including the Temporary Landlord unless the Temporary Landlord is the Secretary of State for Housing, Communities and Local Government)] which materially affects the Academy Trust’s ability to use the Permanent Land [or the Temporary Land] for the purposes of the Academy or any correspondence that affects the extent of the Permanent Land [or the Temporary Land].

["Temporary Land"] means the land at [*insert address of temporary site*] as edged red on the plan attached to this Agreement at Annex [] and demised or to be demised by the Temporary Lease].

["Temporary Lease” means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the **“Temporary Landlord”** under which the Academy Trust derives title or will derive title to the Temporary Land.]

Restrictions on Permanent Land transfer

[This clause applies only if the lease is registrable at the Land Registry – otherwise mark clause 4.A as ‘Not used’.]

4.A The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Permanent Land is demised to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the demise of the Permanent 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 Permanent 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 required to ensure that the Restriction is entered on the proprietorship register of the Academy Trust’s title;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, allow the Secretary of State to do so in its place; and

- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove 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

- 4.B The Academy Trust must keep the Permanent Land [and the Temporary Land] clean and tidy and make good any damage or deterioration to the Permanent Land [and the Temporary Land]. The Academy Trust must not do anything to lessen the value or marketability of the Permanent Land [and the Temporary Land] without the Secretary of State's consent. The Academy Trust must comply with the Permanent Lease [and the Temporary Lease and where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government promptly enforce its rights against the Temporary Landlord].
- 4.C The Academy Trust must not, without the Secretary of State's consent:
 - a) [where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, terminate, renew, vary, surrender, dispose of or agree any revised rent under the Temporary Lease, or]
 - b) grant any consent or licence; or
 - c) create or allow any encumbrance including charging the land; 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 Permanent Land [or the Temporary Land]
Provided that that the Academy Trust may grant a licence or share occupation of part of the Permanent 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 Permanent Lease and where no relationship of landlord and tenant arises as a result of such occupation.
- 4.D The Academy Trust must obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Permanent Land [or the Temporary Land].
- 4.E If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Permanent Lease [or the Temporary 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.

- 4.F After notifying the Secretary of State under clause 4.E, 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.
- 4.G If the Academy Trust has not entered into the Permanent Lease by [DATE] [or the Temporary Lease by [DATE]], the Secretary of State may serve a Termination Notice.
- 4.H If any part of the property situated on the Permanent Land [or the Temporary Land] is damaged or destroyed by an insured risk and the Academy Trust receives the proceeds of insurance but it cannot apply those proceeds to rebuild or reinstate the property because it is impossible or impractical to do so, then the Academy Trust shall pay the insurance proceeds to the Secretary of State in full.

Property Notices

- 4.I If the Academy Trust receives a Property Notice , it must:
- a) send a copy of it (where not issued by the Secretary of State for Housing, Communities and Local Government in its capacity as the Temporary Landlord) 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.

Sharing the Permanent Land

[This clause applies only if the permanent lease is in the long form – if the lease takes the short form, mark clause 4.J as ‘Not used’.]

4.J If:

- a) the Academy does not reach its planned capacity, as stated in clause 2.10, within [●] Academy Financial Years from and including the first year of opening; or
- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 7.1; or
- c) the Secretary of State considers, having consulted with the Academy, that not all the Permanent Land is needed for the operation of the Academy at planned capacity,

the Academy Trust must share occupation of the Permanent Land with such other Academy as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose Provided that 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.

4.K In the event of any inconsistency between the provisions of this Agreement and the Permanent Lease, the provisions of this Agreement will prevail and, for the avoidance of doubt, nothing in the Permanent Lease precludes any requirement for the Academy Trust to obtain the consent of the Secretary of State for any matters or dealings relating to the Permanent Land.

5. TERMINATION

Termination in relation to special purpose

5.1A Subject to clauses 1.J and 5.1B, the Secretary of State may serve a Termination Notice if the Academy Trust fails to transfer a Higher Risk Catholic Academy to an Incoming Academy Trust pursuant to and in accordance with clause 1.M.

5.1B Before issuing a Termination Notice under clause 5.1A, the Secretary of State will invite the Academy Trust to make representations as to whether it is not required to transfer out a Higher Risk Catholic Academy by reason of clause 1.O, and the Secretary of State must give due consideration of any such representations.

Termination by either party

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

Termination Warning Notice

- 5.B The Secretary of State may serve a Termination Warning Notice where he considers that:
- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
 - b) the standards of performance of pupils at the Academy are unacceptably low; or
 - c) there has been a serious breakdown in the way the Academy is managed or governed; or
 - d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or
 - e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.
- 5.C A Termination Warning Notice served under clause 5.B will specify:
- a) the action the Academy Trust must take;
 - b) the date by which the action must be completed; and
 - c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.
- 5.D The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by

which it must be completed.

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

Termination by the Secretary of State after inspection

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

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

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

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

- 5.G.1 [***This clause applies to a boarding academy/boarding free school only, otherwise mark clause 5.G.1 'Not used'***]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.

- 5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F [****or clause 5.G.1***] [****insert if clause 5.G.1 used***]and:

- a) has not received any representations from the Academy Trust by the

date specified in the notice; or

- b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

5.I ***[This clause applies to sponsored academies only – otherwise mark clause 5.I as ‘Not used’]***If the Chief Inspector gives a notice referred to in clause 5.F [*or clause 5.G.1]***[*insert if clause 5.G.1 used]*** to the Academy Trust within two years after the Academy opened, the Secretary of State may only serve a Termination Warning Notice under clause 5.F [*or clause 5.G.1] ***[*insert if clause 5.G.1 used]*** if:

- a) the Chief Inspector has held a monitoring inspection under section 8 of the Education Act 2005 later than two years after the Academy opened; and
- b) the Chief Inspector considers that the Academy is not making enough progress towards the removal of the designation referred to in his notice.

Nothing in this clause prevents or prejudices the Secretary of State exercising any other rights arising from or under this Agreement (including, for the avoidance of doubt, any rights under clauses 5.B to 5.E).

Termination by the Secretary of State

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

5.K ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 5.K as ‘Not used’]***If at any time before the Academy opens, the total number of prospective pupils excluding any pupils receiving nursery provision who have accepted offers of places to attend the Academy in [month and year] is less

than [NUMBER], the Secretary of State may:

- a) require the Academy Trust not to open the Academy until [NUMBER] prospective pupils have accepted offers of places to attend the Academy; or
- b) serve a Termination Notice.

5.L ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 5.L as ‘Not used’]*** If at any time after the Academy has opened, the Secretary of State considers that the Academy is not financially viable because of low pupil numbers, then he may:

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

5.M ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 5.M as ‘Not used’]*** If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.

5.N ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 5.N as ‘Not used’]*** If full planning permission (including where relevant listed building consent) in respect of the Permanent Land [or the Temporary Land] has not been obtained by [DATE], the Secretary of State may serve a Termination Notice.

5.O ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 5.O as ‘Not used’]*** If at any time before the Academy opening date, the Secretary of State considers that:

- a) the Academy would, on opening, provide an unacceptably low standard

of education; or

- b) the safety of pupils or staff at the Academy would, on opening, be threatened; or
- c) the staff employed at the Academy are unsuitable; or
- d) there is a serious breakdown in the way the Academy Trust is being managed or governed; or
- e) the buildings and other structures on the Permanent Land [or the Temporary Land] are unsuitable or the Academy Trust has not obtained Building Regulations approval,

he may either:

- A. require the Academy Trust:
 - i. not to open the Academy; or
 - ii. not to admit pupils of a particular age range, to be determined by the Secretary of State; or
 - iii. not to use any building or other structure on the Permanent Land [or the Temporary Land],

until each relevant matter in paragraphs (a) to (e) above has been resolved to the Secretary of State's satisfaction; or

- B. serve a Termination Notice.

Funding and admission during notice period

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

5.Q If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 5.A, the Academy Trust may

continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

Notice of intention to terminate by Academy Trust

- 5.R The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the **“Funding Allocation”**).
- 5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the **“Critical Year”**) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust (**“All Other Resources”**), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement on 31 August before the Critical Year.
- 5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:
- a) the grounds upon which the Academy Trust’s opinion is based, including:
 - i. evidence of those grounds;
 - ii. any professional accounting advice the Academy Trust has received;
 - iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and

All Other Resources, and the period of time within which such steps will be taken; and

- b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and
- c) a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).

5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.

5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”).

5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert’s fees will be borne equally between the parties.

5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and

Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.

- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before the Critical Year. Any such notice will be given within 21 days after (a) the Expert's determination will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Effect of termination

- 5.Z If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.
- 5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.
- 5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 5.AA, may include:
- a) staff compensation and redundancy payments;
 - b) compensation payments in respect of broken contracts;
 - c) expenses of disposing of assets or adapting them for other purposes;

- d) legal and other professional fees; and
- e) dissolution expenses.

5.DD If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:

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

5.EE The Secretary of State may:

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

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

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

General

- 6.C The Academy Trust cannot assign this Agreement or novate the terms of this Agreement without the prior written consent of the Secretary of State. Such consent not to be withheld if the novation has been consented to or required pursuant to the Master Agreement.
- 6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.
- 6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.
- 6.H ***[Clause only applies to schools which are designated with a Church of England or Roman Catholic character, otherwise mark 6H 'not used'.]***
The Secretary of State agrees that this Agreement shall be interpreted in a way which is compatible with the provisions of clauses 20-20F and 23A-G (if used) of the Church Supplemental Agreement dated [DATE] and made between (1) the Secretary of State; (2) the Academy Trust; (3) [SITE TRUSTEES OR BOARD]; and (4) [DIOCESAN AUTHORITY].

Information Sharing with Local Authorities – Statutory Responsibilities

- 6.I 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.

This Agreement was executed as a Deed on

[DATE]

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

.....

and

.....

Director

Director

or

.....

Company Secretary

or

.....

Witness

Name:

Address:

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

.....

Duly Authorised

ANNEXES

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

“EHC plan” means an education, health and care plan made under section 37 of the Children and Families Act 2014.

7.A 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 pupil (who is over compulsory school age) or parent of the pupil may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

8. [THIS CLAUSE ONLY APPLIES TO FORMER GRAMMAR SCHOOLS CONVERTING TO ACADEMY STATUS] PROCESS FOR REMOVAL OF SELECTION AT WHOLLY SELECTIVE ACADEMIES

8.1. Schools which are maintained grammar schools are subject to a parental ballots process to remove selection. To ensure that they remain subject to a parental ballot process after they convert to become a wholly selective academy school, they must adopt the appropriate document via the link below as an annex to this funding agreement.

8.2. The guidance at the link sets out which annex is appropriate for which school. Depending on the school’s current status under the Education (Grammar School Ballots) Regulations 1998 (as amended) the annex will either be a ‘stand-alone’, ‘group’ or ‘area’ annex.

<https://www.gov.uk/government/publications/academy-conversion-model-ballot-documents-for-grammar-schools>

SCHEDULE – REQUIREMENTS OF THE DEED OF NOVATION AND VARIATION OF THE SUPPLEMENTAL AGREEMENT

The amendments to the Agreement shall include (but not be limited to):

- an update to clause 1.A to change reference from the Company's MFA to the new IAT master funding agreement;
- Clause 1.F to be updated as the Academy will no longer be a designated Higher Risk Catholic Academy (also cross reference numbering to the MFA to be updated);
- *Clause 1.C to be updated to remove definitions relating to Special Provisions and the Pilot ('Special Provisions' and Supplemental Special Provisions in clauses 1J – 1P and 5.1A – 5.1B to be removed)*
- Clause 6.C to revert to model form no assignment drafting.



Department
for Education

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This Agreement was executed as a Deed on *Thursday 9 December 2021*.

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

A C Connors

.....

Director

A Squires

or

.....

Witness

Name: Andrea Squires

Address: Winckworth Sherwood

Minerva House

5 Montague Close

London SE1 9BB

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:



Nigel J. J. J.

Duly Authorised



Department
for Education

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