

FREEDOM OF INFORMATION REDACTION SHEET

Ockendon Studio School

FUNDING AGREEMENT

Exemptions in full n/a	
Partial exemptions Personal information has been redacted from this document under Section 40 of the Freedom of Information (FOI) Act. Section 40 of the FOI Act concerns personal data within the meaning of the Data Protection Act 1998.	
Factors for disclosure	Factors for withholding
<ul style="list-style-type: none">▪ to further the understanding of and increase participation in the public debate of issues concerning Free Schools.▪ to ensure transparency in the accountability of public funds	<ul style="list-style-type: none">▪ to comply with obligations under the Data Protection Act
<u>Reasons why public interest favours withholding information</u> Whilst releasing the majority of Ockendon Studio School's funding agreement will further the public understanding of Free Schools, the whole of Ockendon Studio School's funding agreement cannot be revealed. If the personal information redacted was to be revealed under the FOI Act, personal data would be prejudiced.	

DEED OF VARIATION

The parties to this Deed are:

(1) The Secretary of State for Education (“the Secretary of State”),

- and –

(2) The Ockendon Academy a charitable company incorporated in England and Wales with registered number 07451781 (“the Academy”).

together referred to as the “Parties”

INTRODUCTION

A. The Parties entered into a funding agreement dated 17 December 2010 (“the Funding Agreement”) relating to the establishment, maintenance and funding of an independent school known as The Ockendon Academy.

B The Parties now wish to vary and amend the terms of the Funding Agreement and wish to record their agreement as to such variations/amendments to the Funding Agreement by this Deed.

LEGAL AGREEMENT

1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Funding Agreement, bear the meaning given to it in the Funding Agreement.
2. The Secretary of State and the Academy agree that with effect from the date of this Deed the Funding Agreement shall be amended in accordance with Schedule 1 to this Deed.
3. As varied by this Deed, the Funding Agreement shall remain in full force and effect.

EXECUTED AND DELIVERED AS A DEED by the Parties on the 29th day of June 2012

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

Kim Sibley
.....
Duly Authorised by the Secretary of State for Education

The Ockendon Academy
acting by two directors or a director and a secretary

Brian Duckworth
.....
Director
Print name..... BRIAN DUCKWORTH.....

Barbara King
.....
Director/Secretary
Print name..... BARBARA KING.....



Witnessed by *J. Insole*
.....
Full name..... JACQUELINE INSOLE.....

Address [REDACTED]

Occupation..... FINANCE OFFICER.....

Schedule 1

Amendments to the Funding Agreement

1. The following definition shall be inserted in Clause 4) immediately before the definition of "Additional Governors" in Clause 4) as follows:

"Academy Funding Year' means the year from 1st September to 31st August in any year;"

2. The following definitions shall be inserted in Clause 4) immediately after the definition of "SEN" in Clause 4), as follows:

"Start-up period' in relation to clause 56A only, means up to a maximum of 4 Academy Funding Years and covers the period up to and including the first Academy Funding Year in which all age groups are present at the Studio School (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present)."

"Studio School' means the Ockendon Studio School located within the Ockendon Academy".

3. The definition of "Principal Regulator" in Clause 4) shall be deleted and replaced with:

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

4. Clause 9 of the Funding Agreement shall be deleted and replaced with:

"9) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England to be known as the Ockendon Academy (**the "Academy"**) and meeting such requirements as are referred to in clause 10, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt,

any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust”.

5. Clause 10 of the Funding Agreement shall be deleted and replaced with:

“10) The **Academy** requirements are as set down in Section 1A of the Academies Act 2010”.

6. Clause 11 of the Funding Agreement shall be deleted and replaced with:

“11) The Academy shall open as a school on 1 January 2011 replacing The Ockendon School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010. The Studio School shall open on 2 July 2012.

7. The following clause shall be inserted after Clause 16 of the Funding Agreement:

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

8. Clause 17 of the Funding Agreement shall be deleted and replaced with:

“17) The planned capacity of the Academy is 1230 places in the age range 11 to 19, including a Studio School of 300 places of which 150 places will be for pupils in the age range 16 to 19. The Academy will be an all ability inclusive school whose requirements for:

- a) the admission of pupils to the Academy are set out in Annex B to this Agreement;

- b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex C to this Agreement;

pupil exclusions are set out in Annex D to this Agreement”.

- 9. Clause 21 of the Funding Agreement shall be deleted and replaced with:

“21) The Academy Trust shall ensure that all employees at the Academy other than teachers (“Non-teaching Staff”) have access to either the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] (“the Regulations”), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching staff”.

- 10. Clause 22 of the Funding Agreement shall be deleted and replaced with:

“22) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis in its secondary curriculum on Mathematics and Computing and, in relation to the Studio School only, include an emphasis on obtaining employability skills through project based learning”.

- 11. The following clause shall be inserted after Clause 22 of the Funding Agreement:

“22A) The Academy Trust shall publish information in relation to its current curriculum provision. Such information shall include details relating to

- a) the content of the curriculum;

- b) its approach to the curriculum;
- c) the GCSE options (and other Key Stage 4 qualifications) offered by the Academy; and
- d) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum".

12. The following clause shall be inserted after Clause 24 of the Funding Agreement:

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

13. The following sub-clause shall be inserted after Clause 26b) of the Funding Agreement, as clause 26c):

"c) the Academy Trust:

(1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for the Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State;

(2) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Academy Trust making such an application".

14. Clause 28 of the Funding Agreement shall be deleted and replaced with:

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

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

15. The following clause shall be inserted after Clause 28 of the Funding Agreement:

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

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

16. The following clause shall be inserted after Clause 28A of the Funding Agreement:

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

17. The following clause shall be inserted after Clause 29 of the Funding

Agreement:

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

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

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

18. The following clause shall be inserted after Clause 33 of the Funding Agreement:

“33A) (i) The Academy, including the Studio School, will abide by the requirements of and have regard to any guidance issued by the Secretary of State on:

(a) safeguarding, in particular that contained in the guidance document entitled “Safeguarding Children and Safer Recruitment in Education”, as amended from time to time; and

(b) the employment and work placement/work experience opportunities for pupils, in particular that contained in the document entitled “Guidance on the Employment of Children”, as amended from time to time

33A) (ii) The Academy, including the Studio School, will take appropriate steps to ensure that any employment and work placement/work experience opportunities for pupils are suitable, so as to safeguard the health, safety and welfare of pupils whilst employed or on work placement/work experience either on or off the school premises”.

19. The following clause shall be inserted after Clause 33A of the Funding Agreement:

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

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

20. Clause 48 of the Funding Agreement shall be deleted and replaced with:

“48) Subject to clauses to 56 and 57, GAG for each Academy Financial Year for the Academy (not including the Studio School) will be the total of the following areas of funding:

- a) Formula Funding; Funding equivalent to the level of funding which would be provided through the funding formula of the LA to a maintained school which had all of that Academy’s (not including the Studio School’s) relevant characteristics, including its number of pupils;
- b) Local Authority Central Spend Equivalent: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Budget and the relevant items in the LA Budget, if the Academy (not including the Studio School) were a maintained school. The proportion which this funding will represent will be based on the elements of the LA’s Section 251 Budget Return which are relevant to that Academy (not including the Studio School);
- c) Specialist Schools Allowance: Funding equivalent to that which a maintained school with the Academy’s (not including the Studio School’s) characteristics would receive in respect of their participation in the specialist schools programme. In the year of conversion, this may continue to be paid by the Local Authority”.

21. Clause 49 of the Funding Agreement shall be deleted and replaced with:

“49) The GAG for each Academy Financial Year for the Academy (not including the Studio School) will also include, payable on a basis equivalent to that applied to maintained schools:

- a) funding for matters for which it is necessary for the Academy (not including the Studio School) to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- b) payments in respect of further, specific grants made available to maintained schools, where the Academy (not including the Studio School) meets the requisite conditions and criteria necessary for a maintained school to receive these grants”.

22. The following clause shall be inserted after Clause 49 of the Funding Agreement:

“49A) Subject to clauses 56A and 57A, GAG for each Academy Funding Year for the Studio School will include:

- a) Funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at the Studio School;
- b) Funding for the cost of functions which would be carried out by the local authority if the Studio School were a maintained school, such funding to be determined at the discretion of the Secretary of State;
- c) Funding for matters for which it is necessary for the Studio School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
- d) Payments equivalent to further, specific grants made available to maintained schools, where the Studio School meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary

of State”.

23. Clause 50 of the Funding Agreement shall be deleted and replaced with:

“50) Subject to clause 51, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for the Academy (not including the Studio School) will be, in the first year of conversion, the same basis as that used by the Local Authority for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State. In subsequent years the basis of the pupil count will be as determined by the Secretary of State”.

24. The following clause shall be inserted after Clause 50 of the Funding Agreement:

“50A) Subject to clause 51A, the basis of the pupil number count for the purposes of determining GAG for an Academy Funding Year for the Studio School will be the Academy Trust's estimate each November for numbers on roll in the following September for the Studio School, such estimate to be based on an objective assessment of pupil numbers”.

25. Clause 51 of the Funding Agreement shall be deleted and replaced with:

“51) Once the conditions specified in clause 52 have been satisfied with respect to the Academy (not including the Studio School) for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy (not including the Studio School) will be:

a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding the Academy Financial Year in question; and

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

26. The following clause shall be inserted after Clause 51 of the Funding Agreement:

“51A) Once the condition specified in clause 52A has been satisfied with respect to the Studio School for the Academy Funding Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Studio School will be:

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

and

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

27. Clause 52 of the Funding Agreement shall be deleted and replaced with:

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

a) all planned Year-groups will be present at the Academy (not including the Studio School) (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and

b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy (not including the Studio School), which is 930.

The Secretary of State has determined that the basis shall be as provided for in Clause 51”.

28. The following clause shall be inserted after Clause 52 of the Funding Agreement:

“52A) For the purpose of clause 51A, the condition is satisfied 4 Academy Funding Years after the Academy opening date”.

29. Clause 53 of the Funding Agreement shall be deleted and replaced with:

“53) For any Academy Financial Year in which GAG for the Academy (not including the Studio School) has been calculated in accordance with clause 50, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG to recognise variation from the pupil count basis used”.

30. The following clause shall be inserted after Clause 53 of the Funding Agreement:

“53A) For any Academy Funding Year in which GAG for the Studio School has been calculated in accordance with clauses 50A, 51A and 52A, an adjustment will be made to the following Academy Funding Year's formula funding element of GAG for the Studio School to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation”.

31. Clause 54 of the Funding Agreement shall be deleted and replaced with:

“54) For any Academy Financial Year in which GAG for the Academy (not including the Studio School) is calculated in accordance with clause 51, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs,

such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding”.

32. The following clause shall be inserted after Clause 54 of the Funding Agreement:

“54A) For any Academy Funding Year in which GAG for the Studio School is calculated in accordance with clause 51A, no adjustment will be made to the equivalence funding element in the following Academy Funding Year’s equivalence funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent”.

33. Clause 55 of the Funding Agreement shall be deleted and replaced with:

“55) The Secretary of State recognises that:

a) Where the Academy (not including the Studio School) opens with an intake representing only a proportion of the final planned size of the Academy (not including the Studio School), payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy’s (not including the Studio School’s) needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State may pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 48, 49, 50, 51, 52, 53 and 54, in order to

enable the Academy (not including the Studio School) to operate effectively;

b) Where the Academy (not including the Studio School) opens with pupils transferred from one or more maintained schools which have closed, additional GAG resources may be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum. If the Secretary of State has indicated that such additional GAG will be payable, the Academy Trust will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence”.

34. Clause 56 of the Funding Agreement shall be deleted and replaced with:

“56) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 48, 49, 50, 51, 52, 53 and 54 to allow the Academy (not including the Studio School) to:

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

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

35. The following clause shall be inserted after Clause 56 of the Funding Agreement:

“56A) The Secretary of State may pay further grant in the Start-up

period, as determined and specified by him, for costs which cannot otherwise be met from GAG”.

36. Clause 57 of the Funding Agreement shall be deleted and replaced with:

“57) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy (not including the Studio School) are unlikely to be sufficient to meet the Academy's (not including the Studio School's) needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 48, 49, 50, 51, 52, 53 and 54, in order to enable the Academy (not including the Studio School) to operate effectively”.

37. The following clause shall be inserted after Clause 57 of the Funding Agreement:

“57A) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Studio School are unlikely to be sufficient to meet the Studio School's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the Studio School in the notice period than would be justified solely on the basis of the methods set out in clauses 49A, 50A, 51A, 52A, 53A and 54A, in order to enable the Studio School to operate effectively.

38. Clause 78 of the Funding Agreement shall be deleted and replaced

with:

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

39. The following clause shall be inserted after Clause 80 of the Funding Agreement:

“80A) If the Secretary of State pays grant not including GAG to the Academy Trust on condition either that such grant be used for a particular purpose or purposes or that such grant be used by a certain date, any failure on the part of the Academy Trust to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State either:

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

40. The following clause shall be inserted after Clause 80A of the Funding Agreement:

“80AA) If the Secretary of State or his agents pay Capital Grant to the Academy Trust which includes an amount to cover the VAT which will

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

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

41. Clause 89 of the Funding Agreement shall be deleted and replaced with:

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

- a) the Secretary of State paid capital grant in excess of the value from time to time being specified by the Secretary of State for the asset; or
- b) the asset was transferred to the Academy Trust from a LA for no or nominal consideration."

42. Clause 90 of the Funding Agreement shall be deleted and replaced with:

"Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of

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

43. Clause 96 of the Funding Agreement shall be deleted and replaced with:

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

44. Clause 97 of the Funding Agreement shall be deleted and replaced with:

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

- a) state the grounds on which the Secretary of State considers the Academy or the Studio School no longer meets the requirements set out in clause 10 of this Agreement or is not meeting the conditions and requirements of clauses 12-33 of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;
- b) specify the measures needed to remedy the situation or breach;
- c) specify a reasonable date by which these measures are to be implemented; and
- d) state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided".

45. Clause 100 of the Funding Agreement shall be deleted and replaced with:

“100) In the circumstances of clause 99(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within thirty days from such notification, he shall meet a deputation including representatives from Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy or the Studio School does not and will not meet the requirements set out in clause 10 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 12-33 of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust twelve months written notice to terminate this Agreement”.

46. The following clause shall be inserted after Clause 104 of the Funding Agreement:

“104A) If the Secretary of State is satisfied that any Governor or Member of the Academy Trust is not a suitable person he may:

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

(c) by notice in writing terminate this Agreement forthwith or on such date as the Secretary of State may determine”.

47. Clause 105d) of the Funding Agreement shall be deleted and replaced with:

“105d) the Academy Trust has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 2011 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or”

48. Clause 110 of the Funding Agreement shall be deleted and replaced with:

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

49. Clause 111 of the Funding Agreement shall be deleted and replaced with:

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

50. Clause 116 of the Funding Agreement shall be deleted and replaced with:

“116) The sale or disposal by other means of publicly funded land held

for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010”.

51. The following clause shall be inserted after Clause 116 of the Funding Agreement:

“116A) This Agreement shall not be assignable by the Academy Trust”.

52. The following clause shall be inserted after Clause 116A of the Funding Agreement:

“116B) The Secretary of State and the Academy Trust agree that, notwithstanding the termination of this Agreement, any obligation upon the Academy Trust and/or the Secretary of State expressed as arising upon the termination of this Agreement shall continue to subsist”.

53. Clause 117I of the Funding Agreement shall be deleted and replaced with:

“I) membership and proceedings of the Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 121), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement”.

54. The following sub-clause shall be inserted after Clause 117I of the Funding Agreement, as Clause 117m):

“m) compliance with the requirements of the Charity Commission’s guidance to charities and charity trustees and in particular the Charity Commission’s guidance in the Protecting Charities from Harm (‘the compliance toolkit’) as amended from time to time”.

55. The following clause shall be inserted after Clause 118 of the Funding Agreement:

“118A) (i) The Academy Trust shall provide to the Secretary of State the name of any new or replacement Member or Governor of the

Academy Trust, whether such a person has been appointed or elected, together with the date of such an appointment or election and, where applicable, the name of the Member or Governor such a person replaces as soon as is practicable and in any event within 14 days of the appointment or election of such a person.

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

56 Clause 121B of the Funding Agreement shall be deleted and replaced with:

"121B) (i) The Academy Trust shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement. In compliance with this clause, the Academy Trust shall not do or cause or permit to be done anything to lessen the value or marketability of the Land save with the express written consent of the Secretary of State.

121B) (ii) The Academy Trust agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- a) grant any consent or licence in respect of the Land or any part of it; and / or
- b) create or permit to arise or continue any encumbrance affecting the Land or any part of it; and / or
- c) part with or share possession or occupation of the Land or any

part of it; and / or

d) enter into any onerous or restrictive obligations affecting the Land or any part of it.”

57. Clause 121D of the Funding Agreement shall be deleted and replaced with:

“121D) The Academy Trust hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the said Land or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Academy Trust is unable to use all or part of the Land as the permanent site of the Academy in accordance with clause 121F. On the exercise of this option, the Law Society’s Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.”

58. The following clause shall be inserted after Clause 121D of the Funding Agreement:

“121E) The Academy Trust:

a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 121D and including a copy of this Agreement as evidence of that option,

b) shall take any further steps required to ensure that the notice referred to in clause 121E(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 121E(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the notice referred to in clause 121E(a), hereby consents to the entering of the notice referred to in 121E(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 121E(a) or 121E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust, and

f) in the case of previously unregistered land, for the further protection of the option granted in Clause 121D the Academy Trust shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Academy Trust has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.”

59. The following clause shall be inserted after Clause 121E of the Funding Agreement:

“121F)If the Academy Trust is unable to use the Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Academy Trust that:-

a) he intends to exercise the option granted under clause 121D) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee; and/or

b) the Academy Trust shall dispose of the Land or the relevant part thereof and that, pursuant to clause 91, the Academy Trust may retain some or all of the proceeds of sale of the Land or the relevant part

thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy Trust, save that any proceeds not used to fund the purchase of an alternative permanent site shall be accounted for to the Secretary of State or his nominee.”

60. The following clause shall be inserted after Clause 121F of the Funding Agreement:

“121G) The Academy Trust agrees that if:

- a) the Academy does not reach its planned capacity over a period of 4 Academy Funding Years; or
- b) notice of termination is served by either the Academy Trust or the Secretary of State in accordance with clause 95 of this Agreement; or
- c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the Land;

it will share occupation of the Land with such other Academy as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State”