



EVERSHEDS

Dated 27 FEBRUARY 2015

- (1) MOORLANDS FREE SCHOOL
- (2) BARNFIELD ACADEMY TRUST
- (3) THE SECRETARY OF STATE FOR EDUCATION

Deed of novation and variation
relating to a Funding Agreement dated 19 August 2011

BETWEEN

- (1) **MOORLANDS FREE SCHOOL** (registered number 7665633) whose registered office is at Barnfield College, York Street, Luton LU2 0EZ (the **"Exiting Party"**)
- (2) **BARNFIELD ACADEMY TRUST** (registered number 5958361) whose registered office is at Barnfield College, York Street, Luton LU2 0EZ (the **"Incoming Party"**)
- (3) **THE SECRETARY OF STATE FOR EDUCATION** (the **"Remaining Party"**)

BACKGROUND

- (A) This Deed is supplemental to the Agreement.
- (B) With effect from the Effective Date, the Parties wish to vary and amend the terms of the Agreement and wish to record their agreement as to such variations/amendments to the Agreement by clause 3 of this Deed.
- (C) With effect from the Effective Date, the Exiting Party wishes to be released from the Agreement and the Remaining Party agrees to release the Exiting Party from the Agreement in consideration for the Incoming Party's undertaking to perform the Agreement and to be bound in place of the Exiting Party in accordance with the terms of this Deed.

OPERATIVE PROVISIONS

1. In this Deed:

1.1 the following words and expressions will have the following meanings:

"Agreement" a funding agreement between the Exiting Party and the Remaining Party dated 19 August 2011 under which the Remaining Party agreed to provide funding to the Exiting Party to establish and maintain, and to carry on, or provide for the carrying on of, an independent school in England to be known as Moorlands Free School

"Amended Agreement" **Funding** the amended funding agreement amending and restating the existing Agreement as set out in the Schedule

"Effective Date" the later of:-

a) 1 March 2015; and

b) the date on which this Deed is executed by all the parties to it.

1.2 references to the Schedule are to the schedule to this Deed;

1.3 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality); and

1.4 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.

2. The terms of this Deed will take effect from the Effective Date, subject to the following conditions having been satisfied:

(a) the Incoming Party having entered into a deed of variation to a funding agreement in the agreed form and the deed of variation becoming effective in accordance with the terms thereto; and

(b) the Incoming Party having adopted new articles of association in the agreed form; and

(c) Barnfield Education Partnership Trust having resigned as a member of the Incoming Party.

VARIATION

3. The Parties agree that the Agreement, with effect from the Effective Date, shall be amended and re-stated in the form of the Amended Funding Agreement set out in the Schedule. For the avoidance of doubt, the Amended Funding Agreement does not terminate or suspend the Agreement but further amends and re-states it. For the remaining provisions of this Deed, references to the Agreement shall mean the Agreement as varied pursuant to clause 3.

NOVATION

4. In consideration of the mutual undertakings and obligations contained in this Deed it is agreed as follows:

- 4.1 the Incoming Party undertakes with the Remaining Party to perform the obligations on the Exiting Party's part contained in the Agreement and to be bound by the terms of the Agreement in every way as if the Incoming Party had at all times been party to the Agreement in place of the Exiting Party;
- 4.2 the Exiting Party transfers to the Incoming Party all of the Exiting Party's rights under or in connection with the Agreement and the Remaining Party consents to such transfer;
- 4.3 the Remaining Party undertakes with the Incoming Party to perform the obligations on the Remaining Party's part contained in the Agreement and to be bound by the terms of the Agreement in every way as if the Incoming Party had at all times been party to the Agreement in place of the Exiting Party, and the Remaining Party acknowledges that the Incoming Party will be entitled to enjoy the benefit of the Agreement instead of the Exiting Party;
- 4.4 the Exiting Party releases and discharges the Remaining Party from all claims, obligations, demands and duties whatsoever in respect of the Agreement;
- 4.5 the Exiting Party, the Incoming Party and the Remaining Party acknowledge that the Incoming Party will become liable for all claims, obligations, demands and duties whatsoever in respect of the Agreement upon novation of the Agreement;
- 4.6 the Incoming Party and the Remaining Party acknowledge and agree that all of the acts and omissions of the Exiting Party under or in connection with the Agreement (including any payments made by the Exiting Party) will be deemed to be the acts and omissions of the Incoming Party; and
- 4.7 the Incoming Party agrees to, if requested, indemnify, keep Indemnified and hold harmless the Exiting Party from and against all costs (including legal costs on a full indemnity basis), expenses, liabilities, injuries, losses (including direct, indirect and consequential loss and loss of profit) and damages which the Exiting Party suffers or incurs as a result of any claims, demands and/or proceedings brought or made or threatened to be brought or made against the Exiting Party under or in connection with the Agreement in respect of matters for which, pursuant to this Deed, the Incoming Party is to be liable.

GOVERNING LAW AND JURISDICTION

5. This Deed, and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual dispute or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
6. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in

connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

COUNTERPARTS

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

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the last date listed below.

Signed as a deed by)
MOORLANDS FREE SCHOOL)
acting by one director)
in the presence of:)

Witness Signature: *[Handwritten Signature]* Signature of director

Witness Name: [Redacted]

Witness Address: [Redacted]

Signed as a deed by)
BARNFIELD ACADEMY TRUST)
acting by one director)
in the presence of:) *[Handwritten Signature]*

Witness Signature: *[Handwritten Signature]* Signature of director

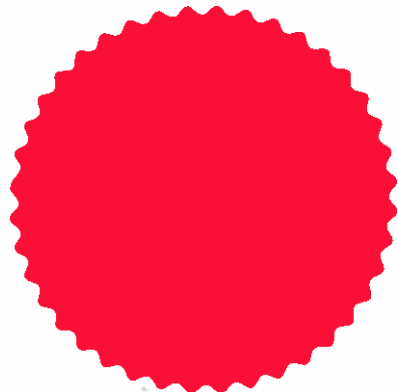
Witness Name: [Redacted]

Witness Address: [Redacted]

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

[Handwritten Signature]
ANTHONY FOOT

Duly Authorised



SCHEDULE
Amended Funding Agreement



Department
for Education

Mainstream academy and free school: supplemental funding agreement

December 2014

Contents

SUMMARY SHEET	4
Information about the Academy:	4
1. ESTABLISHING THE ACADEMY	9
Definitions and interpretation	9
The Academy	10
2. RUNNING OF THE ACADEMY	10
Teachers and staff	10
Pupils	10
SEN unit	11
Charging	11
Admissions	11
Curriculum	14
3. GRANT FUNDING	15
Calculation of GAG	15
Other relevant funding	17
4. LAND	18
5. TERMINATION	31
Termination by either party	31
Termination Warning Notice	31
Termination by the Secretary of State after inspection	32
Termination by the Secretary of State	33
Funding and admission during notice period	33
Notice of intention to terminate by Academy Trust	34

Effect of termination	36
6. OTHER CONTRACTUAL ARRANGEMENTS	37
Annexes	37
The Master Agreement	37
General	38
ANNEXES	39
7. PUPILS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES	39
8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES	39

SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	Barnfield Academy Trust
Company number	05958361
Date of Master Funding Agreement	
Name of Academy	Barnfield Moorlands Free School
Opening date	1 September 2011
Type of Academy (indicate whether academy or free school)	Free School
Religious designation	None
Wholly or partly selective	No
Name of predecessor school (where applicable)	Moorlands School
Capacity number	504
Age range	4-11
Number of sixth form places	None
Number of boarding places	0
SEN unit / Resource provision	N/A
Land arrangements (Version 1-7 or other)	Version 2
Address and title number of Land	High Street, Luton, LU4 9LE

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		✓
2.E	Only applies where there was a predecessor independent school	✓	
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		✓
2.X	Clause only applies where the academy has not been designated with a religious character	✓	
2.Y	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		✓

Clause No.	Descriptor	Applied	Not used
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.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		✓
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 definitions relating to land arrangements have been inserted:

Descriptor	Clause No.	Applied	Not used
The relevant obligations from option 2 of the land clauses (leasehold interests) have been added to option 4 (freehold) to reflect the fact that until Aug 2016 the Academy Trust will hold a lease of the Temporary Site before acquiring the Land (the freehold that will be the academy's permanent site)	4.E1-4.E3 4.F1-4.F2 4.K1-4.K3	✓	
“Rent” means a payment made by the Academy Trust to a third party pursuant to the Lease which is a rent at a market rate but subject to the terms of clause 3.K.1 of this Agreement;	Definitions	✓	
“Temporary Site” means the Land upon which the Academy is to be temporarily situated from 1 September 2011.	Definitions	✓	
3.K.1 The Secretary of State shall meet the Academy Trust’s costs arising from Rent payable by the Academy Trust under the Lease. Such costs shall include those	3.K.1	✓	

Descriptor	Clause No.	Applied	Not used
<p>costs arising from any rent rise payable by the Academy Trust under the terms of the Lease, so long as the relevant rent rise is properly evidenced in writing by the Academy Trust to the Department for Education as soon as is reasonably practicable, but such costs shall not include any amount in respect of service charge payments or insurance premiums. Where the definition of rent in the Lease includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums. For the purpose of this clause only, references to "Rent" shall refer only to Rent payable in respect of the Temporary Site, and not to Rent payable in respect of the Land.</p>			
<p>Has not been applied to the Academy as only applies in circumstances where the academy is not yet open.</p>	5K		✓
<p>Inserted new termination right to reflect that freehold site has not been identified but contracts not exchanged; and involves new build requiring planning consent</p>	5N, 5O		✓

1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and Barnfield Academy Trust is supplemental to the master funding agreement made between the same parties and dated 24 May 2007 as varied by deeds of variation between the Parties dated 31 January 2011, 4 September 2012 and 2015 (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 Barnfield Moorlands Free School.

"Rent" means a payment made by the Academy Trust to a third party pursuant to the Lease which is a rent at a market rate but subject to the terms of clause 3.K.1 of this Agreement;

"Temporary Site" means the land upon which the Academy is to be temporarily situated from 1 September 2011 demised to the Academy Trust under the Lease known as land at high Street, Luton LU4 9LE the freehold in respect of which is registered with title numer BD99769;

"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 Free School as defined in clause 1.4 of the Master Agreement.

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

1.H The Academy Trust opened the Academy on 1 September 2011.

1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.X of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

2. RUNNING OF THE ACADEMY

Teachers and staff

2.A Subject to clause 2.4 of the Master Agreement, 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 Not used.

Pupils

2.B The planned capacity of the Academy is 504 in the age range 4-11. The

Academy will be an all ability inclusive school.

SEN unit

2.C Not used.

2.D Not used

Charging

2.E The Academy Trust must charge fees for the full cost of the education provided at an Academy to non-European Economic Area students who:-

- a) have a valid United Kingdom visa the terms of which state that the relevant student cannot access non-fee paying education; or
- b) no longer have a valid United Kingdom visa allowing them to enter or remain in the United Kingdom but are applying to renew such a visa; and in each case
- c) transferred to the Academy from any predecessor institution.

If the Academy fails to charge these students, or is unable to recover fees by the end of the term for which they are due, it must report this to the Secretary of State who may inform the UK Border Agency.

Admissions

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

2.G 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 The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the “pupil premium admission criterion”), but not above looked-after children and previously looked-after children.
- 2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.
- 2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
- a) any personal details about their financial status; or
 - b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.
- 2.L The Secretary of State may:
- a) direct the Academy Trust to admit a named pupil to the Academy:
 - i. following an application from an LA including complying with a school attendance order as defined in section 437 of the

Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

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

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

2.M Not used.

2.N Not used.

2.O Not used.

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

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

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator (“OSA”) will consider objections to the Academy’s admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.K, 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 as quickly as possible.

2.T Not used.

Curriculum

2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to “religious education” and “religious worship” in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.X.

2.W Not used.

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

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a

community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y Not used.

3. **GRANT FUNDING**

Calculation of GAG

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

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

3.C In the Academy Financial Year 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

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

3.H Not used.

3.I The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, or the Master Agreement is otherwise terminated, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the

Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

Other relevant funding

3.J Not used.

3.K The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid..

3.K.1 The Secretary of State shall meet the Academy Trust's costs arising from Rent payable by the Academy Trust under the Lease. Such costs shall include those costs arising from any rent rise payable by the Academy Trust under the terms of the Lease, so long as the relevant rent rise is properly evidenced in writing by the Academy Trust to the Department for Education as soon as is reasonably practicable, but such costs shall not include any amount in respect of service charge payments or insurance premiums. Where the definition of rent in the Lease includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums. For the purpose of this clause only, references to "Rent" shall refer only to Rent payable in respect of the Temporary Site, and not to Rent payable in respect of the Land.

Carrying forward of funds

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

4. **LAND**

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

"Discharge Process" means the removal of:

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

"Land" means the land at Osborne Road and Park Road, Luton, which is to be the permanent site of the Academy.

"Land Value" means, at any time:

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

"Lease" means the lease between the Academy Trust and a third party (the **"Landlord"**) under which the Academy Trust occupies the Temporary Site.

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

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

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

Debt

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

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

Restrictions on Land transfer

4.C The Academy Trust must:

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

i. within 28 days after acquiring the Land:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT"; and

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

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor

for the time being of the charge dated [date of charge] in favour of The Secretary of State for Education referred to in the charges register or by its conveyancer”;

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

Obligations of the Academy Trust

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

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

in respect of all or part of the Land.

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

4.E1 The Academy Trust must keep the Temporary Site clean and tidy and make good any damage or deterioration to the Temporary Site. The Academy Trust must

not do anything to lessen the value or marketability of the Temporary Site without the Secretary of State's consent.

4.E2 The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.

4.E3 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 Temporary Site.

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.

Breach of Lease

4.F1 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.F2 After notifying the Secretary of State under clause 4.F1, 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.

Option

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

Option Notice

4.H The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the "**Option Notice**")

to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;

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

Legal Charge

4.1 The Academy Trust must

- a) enter into the Legal Charge:
 - i. on completion of the acquisition of the Land, if at that time the Academy Trust is an exempt charity for the purposes of the Charities Act 2011, or
 - ii. within two weeks after the Academy opens, if the Academy Trust is not an exempt charity for the purposes of the Charities Act 2011 when it acquires the Land;
- b) within 21 days from the date of the Legal Charge, register it with Companies House or, if required by the Secretary of State, use all

reasonable endeavours to assist the Secretary of State in doing so, including signing and executing any necessary documents;

- c) within 28 days from the date of the Legal Charge, apply to the Land Registry for the Legal Charge to be entered on the charges register, taking any other steps required to have the Legal Charge registered and promptly confirming to the Secretary of State when this has been done; and
- d) if it has not registered the Legal Charge, allow the Secretary of State to register it, and use all reasonable endeavours to help register the Legal Charge, including signing and executing any necessary documents and dealing with requisitions from the Land Registry.

Land not used for the purposes of the Academy

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

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

Sharing the Land

4.K If:

- a) the Academy does not reach its planned capacity, as stated in clause 2.B, within 7 Academy Financial Years; or

- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 5.A; or
- c) the Secretary of State considers that not all the Land is needed for the operation of the Academy at planned capacity,

then:

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

4.K1 Where:

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Temporary Site is located; and
- b) the Secretary of State then considers that not all the Temporary Site 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 Temporary Site 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.K2 To the extent the Academy Trust and the Secretary of State agree to part of the Temporary Site being demised or sublet in accordance with clause 4.K1, 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 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 costs incurred by the Academy Trust in connection with this clause.

4.K3 For the purposes of clause 4.K1:

- a) a basic need will arise when the forecast demand for pupil places in the area where the Temporary Site is located is greater than the existing capacity to provide them;
- b) a parental need will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Temporary Site is located, following representations from parents in that area; and
- c) planned capacity has the meaning given in clause 2.B.

Exercise of Rights

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

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

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

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

Academy Trust pays the Debt (or, if it proposes to sell only part of the Land, pays the Market Value of the part sold) to the Secretary of State;

- ii. that pursuant to clause 4.29 of the Master Agreement, the Academy Trust keeps some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder; or
- iii. that pursuant to clause 4.30 of the Master Agreement, the Academy Trust pays all or some of the sale proceeds to the relevant LA and may reinvest all or some of the sale proceeds for its charitable purposes.

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

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

clause 4.29 of the Master Agreement; and

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

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

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

c) the Secretary of State will carry out the Discharge Process.

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

a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State to the extent of the Market Value;

b) Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State, as required under clause 4.29 of the Master Agreement, in relation to the part of the Land transferred, and

c) the Secretary of State will carry out the Discharge Process in relation to the part of the Land which has been transferred.

Payment of Debt

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

4.V If the Academy Trust:

a) sells some or all of the Land in accordance with clause 4.Q(b), or

b) pays the Debt to the Secretary of State,

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

5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline.

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

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

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

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

Termination by the Secretary of State after inspection

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

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

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

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

5.G.1 Not used.

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

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

he may serve a Termination Notice.

5.I Not used.

Termination by the Secretary of State

- 5.J If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that determination is pending, he may serve a Termination Notice.
- 5.K Not used
- 5.L If at any time after the Academy has opened, the Secretary of State considers that the Academy is not financially viable because of low pupil numbers, then he may:
- a) serve a Termination Warning Notice; or
 - b) serve a Termination Notice.
- 5.M If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.
- 5.N If full planning permission (including where relevant listed building consent) in respect of the Land has not been obtained by 31 October 2015, the Secretary of State may serve a Termination Notice.
- 5.O If the Academy Trust has not exchanged contracts for the acquisition of the Land by 15 August 2016, the Secretary of State may serve a Termination Notice.
- 5.P Not used.

Funding and admission during notice period

- 5.Q 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.R 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.S 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.T 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 at the end of the then current Academy Financial Year.
- 5.U 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.V 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.W 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.X 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.Y 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.Z 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 to 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.AA 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.BB 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.CC 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.DD 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.EE 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.FF The Secretary of State may:

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

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

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

General

- 6.C The Academy Trust cannot assign this Agreement.
- 6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.
- 6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.
- 6.H Not used.

ANNEXES

7. PUPILS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES

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

“EHC plan” means an Education, Health and Care plan made under sections 37(2) of the Children and Families Act 2014.

7.A Except as set out in clause 10 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State’s determination will be final, subject to any right of appeal which a parent of the child may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

7.B Not used

7.C Not used

7.D Not used.

8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

8.A The Academy Trust must for each of its Academies, subject to its right of appeal to the Secretary of State, admit all pupils with a statement of SEN naming the Academy.

8.B Where an LA proposes to name one of the Academies in a statement of SEN, it must give the Academy Trust written notice of this, stating why it considers that Academy to be suitable for the pupil in question. Within 15 days of receipt of the LA’s notice, the Academy Trust must consent to being named, except

- where admitting the child would be incompatible with the provision of efficient education for other children, and no reasonable steps could secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children or the efficient use of resources, the Academy Trust must have regard to the relevant Guidance issued to maintained schools.
- 8.C If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.
- 8.D The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA.
- 8.E If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, 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 Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.
- 8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability), either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.
- 8.G Where it has been finally determined that the Academy be named in a child's statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.

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



Department
for Education

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