

# FREEDOM OF INFORMATION REDACTION SHEET

Perry Beeches The Academy Trust

## 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

- 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

### Factors for withholding

- to comply with obligations under the Data Protection Act

### Reasons why public interest favours withholding information

Whilst releasing the majority of Perry Beeches V The All Through Family School's supplemental funding agreement will further the public understanding of Free Schools, the whole of The Edge Academy's funding agreement cannot be revealed. If the personal information redacted was to be revealed under the FOI Act, personal data would be prejudiced.



Department  
for Education

# **Perry Beeches V The All Through Family School**

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

**24 March 2015**

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## **SUMMARY SHEET**

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

<b>Name of Academy Trust</b>	Perry Beeches The Academy Trust
<b>Company number</b>	07749786
<b>Date of Master Funding Agreement</b>	24 March 2015
<b>Name of Academy</b>	Perry Beeches V The All Through Family School
<b>Opening date</b>	2 September 2015
<b>Type of Academy (indicate whether academy or free school)</b>	Free School
<b>Religious designation</b>	N/A
<b>Wholly or partly selective</b>	N/A
<b>Name of predecessor school (where applicable)</b>	N/A
<b>Capacity number</b>	1,320
<b>Age range</b>	4-19 years
<b>Number of sixth form places</b>	120
<b>Number of boarding places</b>	N/A
<b>SEN unit / Resource provision</b>	N/A
<b>Land arrangements (Version 1-7 or other)</b>	Version 4 and 6
<b>Address and title number of Land</b>	Cable Phone House, Talbot Way, Small Heath, Birmingham B10 0HJ and registered under title number WM596497 ("the Leasehold Land"; and  Waverley Building and Waverley Driveway on the south side of Coventry Road, Small Heath, Birmingham, registered under title number WM556617 ("the Freehold Land")

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	X	
2.A.1	Clause applies where an academy was previously a VC or foundation school designated with a religious character		X
2.C, 2.D	Only applies where the academy has an SEN unit		X
2.E	Only applies where there was a predecessor independent school		X
2.G	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		X
2.M	Clause applies only to academies and free schools designated with a religious character		X
2.N	Clause applies only to academies that were formerly wholly selective grammar schools		X
2.O	Clause applies only to academies that were formerly partially selective grammar schools		X
2.T	Clause applies to free schools and new provision academies designated with a religious character		X
2.W	Clause only applies where the academy is designated with a religious character		X
2.X	Clause only applies where the academy has not been designated with a religious character	X	
2.Y	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		X
2.Yc)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian'		X

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

## 1. **ESTABLISHING THE ACADEMY**

1.A This Agreement made between the Secretary of State for Education and Perry Beeches The Academy Trust is supplemental to the master funding agreement (the “**Master Agreement**”) made between the same parties and dated 24 March 2015.

### **Definitions and interpretation**

1.B Except as expressively 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 Perry Beeches V The All Through Family School.

“**Freehold Land**” means as defined in clause 4.1A.

“**Land**” means the Leasehold Land and the Freehold Land.

“**Leasehold Land**” means as defined in clause 4.1AA.

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

“**Start-Up Period**” means up to 7 Academy Financial Years and covers the period up to and including the first Academy Financial Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present).

“**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 her 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 will open the Academy on 2 September 2015.
- 1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with 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 1,320 in the age range 4 - 19, including a sixth form of 120 places. The Academy will be an all ability inclusive school.

## **SEN unit**

2.C Not used.

2.D Not used.

## **Charging**

2.E Not used

## **Admissions**

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

2.G Not used.

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

2.I 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 Trust 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.
- 2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials

and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

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

### 3. **GRANT FUNDING**

#### **Calculation of GAG**

- 3.A Subject to clause 3.C, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 3.B.
- 3.B The Secretary of State will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the purposes of determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.
- 3.C In the Academy Financial Year 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 her 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 her discretion.
- 3.H The Secretary of State may pay a further element of GAG to the Academy Trust during the Start-Up Period or during the period when year groups are

present who have transferred from the Predecessor School, in order to allow the Academy to:

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

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

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

#### **Other relevant funding**

- 3.J Not used.

- 3.K Not used. **Carrying forward of funds**

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

#### **4. LAND**

##### **Freehold Land**

- 4.1A With regard to the freehold land arrangements in clauses 4A to 4V the following definitions shall apply:



**“Freehold Debt”** means an amount equal to 100% of the Freehold Land Value;

**“Freehold Discharge Process”** means the removal of:

- i. the Freehold Legal Charge registered with Companies House against the Academy Trust;
- ii. the Freehold Legal Charge from the charges register at the Land Registry against the title for the Freehold 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).

**“Freehold Land”** means the land at Waverley Building and Waverley Driveway, on the south side of Coventry Road, Small Heath, Birmingham being the freehold land registered with title number WM556617, which is to be the permanent site of the Academy.

**“Freehold Land Value”** means, at any time:

- i. where the Freehold Land has been disposed of as a result of the enforcement of the Freehold 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 Freehold Market Value.

**“Freehold Legal Charge”** means the legal charge over the Freehold 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.

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

**“Freehold 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 Freehold Land for the purposes of the Academy.

### **Freehold Debt**

4.A The Academy Trust must pay the Freehold 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 Freehold Land with or without the Secretary of State’s consent.

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

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

4.C The Academy Trust must:

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

i. within 28 days after acquiring the Freehold 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 Freehold 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 Freehold Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when each Freehold Restriction has been registered;
- d) if it has not registered each Freehold 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 Freehold 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 Freehold 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 Freehold Land.

### **Freehold Property Notices**

4.F If the Academy Trust receives a Freehold 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 she 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.

### **Freehold Option**

4.G The Academy Trust grants and the Secretary of State accepts an option (the “**Freehold Option**”) to acquire all or part of the Freehold Land at nil consideration. The Secretary of State may exercise the Freehold Option in writing if this Funding Agreement is terminated for any reason, or if the Academy Trust cannot use all or part of the Freehold Land as the permanent site of the Academy under clauses 4.J or 4.Q. If the Freehold 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.

### **Freehold Option Notice**

4.H The Academy Trust:

- a) must, within 14 days after acquiring the Freehold 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 Freehold Option (the “**Freehold Option Notice**”) to be entered in the register, taking any further steps required to have the Freehold Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Freehold 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 Freehold 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 Freehold 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, she may apply to secure the registration.

### **Freehold Legal Charge**

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

- a) enter into the Freehold Legal Charge:
  - i. on completion of the acquisition of the Freehold 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 Freehold Land;
- b) within 21 days from the date of the Freehold 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 Freehold Legal Charge, apply to the Land Registry for the Freehold Legal Charge to be entered on the charges register, taking any other steps required to have the Freehold Legal Charge registered and promptly confirming to the Secretary of State when this has been done; and

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

### **Freehold Land not used for the purposes of the Academy**

4.J If the Academy Trust cannot use all or part of the Freehold 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) she intends to exercise the Freehold Option to transfer the Freehold Land or the relevant part of it for nil consideration to herself or her nominee;
- b) the Academy Trust must pay the Freehold Debt or the Freehold Market Value; and/or
- c) the Academy Trust must sell the Freehold 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 Freehold 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 Freehold Land is needed for the operation of the Academy at planned capacity,

then:

- i. the Academy Trust must share occupation of the Freehold 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 Freehold Land as required by the Secretary of State and account for the sale proceeds to the Secretary of State in part payment of the Freehold Debt, after which the Secretary of State will carry out the Freehold Discharge Process over the part of the Freehold Land that has been sold.

### **Exercise of Rights**

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

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

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

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

- a) the Academy Trust will be deemed to have paid the Freehold Debt to the Secretary of State after the Freehold 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 Freehold Land as required under clause 4.29 of the Master Agreement; and
  - c) the Secretary of State will carry out the Freehold Discharge Process.
- 4.O If, on termination of this Agreement, the Secretary of State exercises her rights under clause 5.DD, then:
- a) the Academy Trust will be deemed to have paid the Freehold Debt to the Secretary of State; and
  - b) the Secretary of State will carry out the Freehold 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 Freehold 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 Freehold Debt to the Secretary of State; and
  - b) the Secretary of State will carry out the Freehold Discharge Process.
- 4.Q If the Academy Trust applies to the Secretary of State for consent to sell all or part of the Freehold Land, and if the Secretary of State agrees that the Freehold Land is no longer needed or cannot be used for the purposes of the Academy, she may:
- a) exercise the Freehold 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 Freehold Debt (or, if it proposes to sell



only part of the Freehold Land, pays the Freehold 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 Freehold Land, subject to any of the conditions in clause 4.Q(b):

- a) if the Secretary of State enforces the Freehold Legal Charge, then:
  - i. the Academy Trust will be deemed to have paid the Freehold Debt to the Secretary of State after the Freehold 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 Freehold Discharge Process;
- b) if all of the Freehold 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 Freehold 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 Freehold Discharge Process;
- c) if part of the Freehold 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 Freehold Debt to the Secretary of State to the extent of the Freehold 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 Freehold Land; and
  - iii. the Secretary of State will carry out the Freehold Discharge Process in relation to the part of the Freehold 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 Freehold 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 Freehold Discharge Process in relation to the part of the Freehold Land which has been sold.

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

- a) the Academy Trust will be deemed to have paid the Freehold 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 Freehold Discharge Process.

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

- a) the Academy Trust will be deemed to have paid the Freehold Debt to the Secretary of State to the extent of the Freehold 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 Freehold Land transferred, and
- c) the Secretary of State will carry out the Freehold Discharge Process in relation to the part of the Freehold Land which has been transferred.

### **Payment of Debt**

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

4.V If the Academy Trust:

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

### **Leashold Land Arrangements**

4.1AA With regard to the leasehold land arrangements in clauses 4AA to 4ZZ the following definitions shall apply:

**“Leasehold Debt”** means an amount equal to 100% of the **Leasehold Land Value**;

**“Leasehold Discharge Process”** means the removal of:

- i. the Leasehold Legal Charge registered with Companies House against the Academy Trust;
- ii. the Leasehold Legal Charge from the charges register at the Land Registry against the title for the Leasehold Land;
- iii. the Leasehold Restriction in the proprietorship register referred to in clause 4.CC(a); and
- iv. the Leasehold Option Notice in the proprietorship register referred to in clause 4.LL(a).

**“Leasehold Land”** means the land at Cable Phone House, Talbot Way, Small Heath Birmingham B10 0HJ, being the land registered with title number WM596497 and demised by the Lease.

**“Leasehold Land Value”** means, at any time:

- i. where the Leasehold Land has been disposed of as a result of the enforcement of the Leasehold 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 Leasehold Market Value.

**“Lease”** means the lease or other occupational agreement between the Academy Trust and a third party (the **“Landlord”**) under which the Academy Trust derives title to the Leasehold Land.

**“Leasehold Legal Charge”** means the legal charge over the Leasehold 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.

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

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

### **Leasehold Debt**

4.AA The Academy Trust must pay the Leasehold Debt to the Secretary of State on termination of this Agreement or in accordance with clauses 4.NN(b) or 4.UU(b)(i) or on a sale of all or part of the Leasehold Land with or without the Secretary of State’s consent.

4.BB The Leasehold Debt is secured by the Leasehold Legal Charge.

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

4.CC The Academy Trust must:

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

i. within 28 days after acquiring the Leasehold 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 Leasehold 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 Leasehold Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when each Leasehold Restriction has been registered;
- d) if it has not registered each Leasehold 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 Leasehold 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.DD The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.

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

- a) terminate, renew, vary, surrender, dispose of or agree any revised rent under the Lease; or
- b) grant any consent or licence; or
- c) create or allow any encumbrance; or
- d) part with or share possession or occupation; or

- e) enter into any onerous or restrictive obligations,

in respect of all or part of the Leasehold Land.

4.FF 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 Leasehold Land.

4.GG 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.HH After notifying the Secretary of State under clause 4.GG, the Academy Trust must:

- a) promptly give the Secretary of State all the information she asks for about the breach;
- b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

4.II Not used.

### **Leasehold Property Notices**

4.JJ If the Academy Trust receives a Leasehold 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 she 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.

### **Leasehold Option**

4.KK The Academy Trust grants and the Secretary of State accepts an option (the “**Leasehold Option**”) to acquire the Leasehold Land at nil consideration. The Secretary of State may exercise the Leasehold Option in writing if this Funding Agreement is terminated for any reason, or if the Academy Trust cannot use all or part of the Leasehold Land as the permanent site of the Academy under clauses 4.NN or 4.UU. If the Leasehold 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.

### **Leasehold Option Notice**

4.LL The Academy Trust:

- a) must, within 14 days after acquiring the Leasehold 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 Leasehold Option (the “**Leasehold Option Notice**”) to be entered in the register, taking any further steps required to have the Leasehold Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Leasehold 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 Leasehold 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 leasehold land, within 14 days after acquiring the Leasehold 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, she may apply to secure the registration.

### **Leasehold Legal Charge**

#### 4.MM The Academy Trust must

- a) enter into the Leasehold Legal Charge:
  - i. on completion of the acquisition of the Leasehold 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 Leasehold Land;
- b) within 21 days from the date of the Leasehold 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 Leasehold Legal Charge, apply to the Land Registry for the Leasehold Legal Charge to be entered on the charges register, taking any other steps required to have the Leasehold Legal Charge registered and promptly confirming to the Secretary of State when this has been done; and
- d) if it has not registered the Leasehold Legal Charge, allow the Secretary of State to register it, and use all reasonable endeavours to help register the Leasehold Legal Charge, including signing and executing

any necessary documents and dealing with requisitions from the Land Registry.

### **Leasehold Land not used for the purposes of the Academy**

4.NN If the Academy Trust cannot use all or part of the Leasehold 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) she intends to exercise the Leasehold Option to transfer the Leasehold Land for nil consideration to herself or her nominee;
- b) the Academy Trust must pay the Leasehold Debt or the Leasehold Market Value; and/or
- c) the Academy Trust must sell the Leasehold Land, keeping some or all of the sale proceeds to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, and accounting to the Secretary of State for any proceeds not so used.

### **Sharing the Leasehold Land**

4.OO 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 Leasehold Land is needed for the operation of the Academy at planned capacity,

then:

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

### **Exercise of Rights**

4.PP On termination of this Agreement, the Secretary of State may give notice that she intends to exercise his rights under clauses 4.KK, 5.DD or 5.EE or under the Leasehold 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.QQ If the Secretary of State exercises the Leasehold Option on termination of this Agreement, then:

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

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

- a) the Academy Trust will be deemed to have paid the Leasehold Debt to the Secretary of State after the Leasehold 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 Leasehold Land as required under clause 4.29 of the Master Agreement; and

- c) the Secretary of State will carry out the Leasehold Discharge Process.
- 4.SS 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 Leasehold Debt to the Secretary of State; and
  - b) the Secretary of State will carry out the Leasehold Discharge Process.
- 4.TT 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 Leasehold 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 Leasehold Debt to the Secretary of State; and
  - b) the Secretary of State will carry out the Leasehold Discharge Process.
- 4.UU If the Academy Trust applies to the Secretary of State for consent to sell all or part of the Leasehold Land, and if the Secretary of State agrees that the Leasehold Land is no longer needed or cannot be used for the purposes of the Academy, she may:
- a) exercise the Leasehold 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 Leasehold Debt (or, if it proposes to sell only part of the Leasehold Land, pays the Leasehold 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.VV If the Secretary of State consents to the sale of the Leasehold Land, subject to any of the conditions in clause 4.UU(b):

- a) if the Secretary of State enforces the Leasehold Legal Charge, then:
  - i. the Academy Trust will be deemed to have paid the Leasehold Debt to the Secretary of State after the Leasehold 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 Leasehold Discharge Process;
- b) if all of the Leasehold 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 Leasehold 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 Leasehold Discharge Process;
- c) if part of the Leasehold 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 Leasehold Debt to the Secretary of State to the extent of the Leasehold 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 Leasehold Land; and
  - iii. the Secretary of State will carry out the Leasehold Discharge Process in relation to the part of the Leasehold 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 Leasehold 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 Leasehold Discharge Process in relation to the part of the Leasehold Land which has been sold.

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

- a) the Academy Trust will be deemed to have paid the Leasehold 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 Leasehold Discharge Process.

4.XX Not used.

### **Payment of Debt**

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

4.ZZ If the Academy Trust:

a) sells some or all of the Leasehold Land in accordance with clause 4.UU, or

b) pays the Leasehold 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 she 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 she 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) she 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 her 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;

she 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, she may serve a Termination Notice.

5.K If at any time before the Academy opens, the total number of prospective pupils who have accepted offers of places to attend the Academy in September 2015 is less than 70 reception year pupils and 70 Year 7 pupils, the Secretary of State may:

- a) require the Academy Trust not to open the Academy until 70 reception and 70 Year 7 prospective pupils have accepted offers of places to attend the Academy; or
- b) serve a Termination Notice.

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 she 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 July 2015, the Secretary of State may serve a Termination Notice.
- 5.O If at any time before the Academy opening date, the Secretary of State considers that:
- a) the Academy would, on opening, provide an unacceptably low standard of education; or
  - b) the safety of pupils or staff at the Academy would, on opening, be threatened; or
  - c) the staff employed at the Academy are unsuitable; or
  - d) there is a serious breakdown in the way the Academy Trust is being managed or governed; or
  - e) the buildings and other structures on the Land are unsuitable or the Academy Trust has not obtained Building Regulations approval,
- she may either:
- A. require the Academy Trust:
    - i. not to open the Academy; or
    - ii. not to admit pupils of a particular age range, to be determined by the Secretary of State; or
    - iii. not to use any building or other structure on the Land,
- until each relevant matter in paragraphs (a) to (e) above has been resolved to the Secretary of State's satisfaction; or

- B. serve a Termination Notice.

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

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

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

- 5.R The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the **“Funding Allocation”**).
- 5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the **“Critical Year”**) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust (**“All Other Resources”**), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:

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

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

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

- 5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert's fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching her determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.
- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before 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 her refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

### **Effect of termination**

- 5.Z If this Agreement is terminated, the Academy will cease to be an academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, she will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, she may at her discretion indemnify or compensate the Academy Trust.
- 5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the

Academy Trust, and will be paid as and when the Secretary of State considers appropriate.

5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 5.AA, may include:

- a) staff compensation and redundancy payments;
- b) compensation payments in respect of broken contracts;
- c) expenses of disposing of assets or adapting them for other purposes;
- d) legal and other professional fees; and
- e) dissolution expenses.

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

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

5.EE The Secretary of State may:

- a) Waive all or part of the repayment due under sub-clause 5.DD(b) if the Academy Trust obtains her 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.

This Agreement was executed as a Deed on 24 March 2015

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

  
.....  
**Mr. LIAM NOLAN**  
**Director**

and

  
.....  
**MRS JACKIE POWELL**  
**Director**

or .....

**Company Secretary**

or .....

**Witness**

Name:

Address:

The Corporate Seal of

**THE SECRETARY OF STATE FOR EDUCATION**

affixed to this deed is authenticated by:



**Duly Authorised**



## **ANNEXES**

### **7. 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 8 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The 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.