THE YOUTH ENGAGEMENT SCHOOLS TRUST

DEED OF VARIATION OF FUNDING AGREEMENT

2019

The Parties to this Deed are:

(1) **The Secretary of State for Education** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the **"Secretary of State"**); and

(2) **The Youth Engagement Schools Trust**, a charitable company incorporated in England and Wales with registered company number 088275502, whose registered office is at Beswick Street, Macclesfield, Cheshire, England, SK11 8JG (the "**Academy Trust"**)

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

INTRODUCTION

A. The Parties entered into a Funding Agreement for the purposes of a single academy on 16 March 2015, a copy of which is contained in Schedule A (the **"Existing FA"**).

B. The Company now intends to run more than one academy.

C. The Parties therefore have agreed to amend and restate the terms of the Existing FA, in accordance with the terms of this Deed, to form a multi academy trust.

LEGAL AGREEMENT

1. Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Master Funding Agreement (as defined in clause 2 below).

2. The Secretary of State and the Company agree that with effect from the date of this Deed, the Existing FA shall be amended and restated in the form of a new agreement which shall consist of the terms of the Master Funding Agreement contained in Schedule B (the "Master Funding Agreement") and separating other provisions into a corresponding Supplementary Funding Agreement contained in Schedule C (the "Supplemental Funding Agreement")..

GOVERNING LAW AND JURISDICTION

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

4. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Deed or its subject matter or formation (including non-contractual disputes or claims).

COUNTERPARTS

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

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

EXECUTED as a deed by affixing the corporate)
seal of the **Secretary of State for Education**)
authenticated by:-)

……
Duly authorised by the Secretary of State for Education

Date…….

EXECUTED as a deed by **The Youth Engagement Schools Trust** acting by:

……..
Director

Print name……..
Date……..

……
Director/Secretary

Print name……..
Date……..

SCHEDULE A
EXISTING FUNDING AGREEMENT
THE YOUTH ENGAGEMENT SCHOOLS TRUST

FREEDOM OF INFORMATION REDACTION SHEET

The Fermain Academy

FUNDING AGREEMENT

Exemptions in full

n/a

Partial exemptions

Personal information has been redacted from this document under Section 40 of the Freedom of Information (FOI) Act.

Section 40 of the FOI Act concerns personal data within the meaning of the Data Protection Act 1998.

Factors for disclosure	Factors for withholding
▪ 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	▪ to comply with obligations under the Data Protection Act

<u>Reasons why public interest favours withholding information</u>

Whilst releasing the majority of The Fermain Academy's funding agreement will further the public understanding of Free Schools, the whole of The Fermain 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

The Fermain Academy

Funding Agreement

16 March 2015

MODEL FUNDING AGREEMENT: SINGLE, MAINSTREAM ACADEMY/FREE SCHOOL

CONTENTS

SUMMARY		5
1	**ESTABLISHING THE ACADEMY**	9
	Introduction to this agreement	9
	General Obligations of the Academy Trust	13
	Academy opening date	14
	Governance	15
2.	**RUNNING OF THE ACADEMY**	15
	Length of school day and year	15
	Teachers and staff	16
	Pupils	17
	School meals	17
	Pupil Premium	18
	Charging	19
	Admissions	19
	Curriculum	21
	Assessment	23
3.	**GRANT FUNDING**	25
	Recurrent Expenditure grants	25
	Capital Grant	25
	General Annual Grant (GAG)	27
	Calculation of GAG	29

Earmarked Annual Grant (EAG) 29

Arrangements for paying GAG and EAG 30

Other relevant funding 31

4. FINANCIAL AND ACCOUNTING REQUIREMENTS 31

General 31

Application of the Academies Financial Handbook 32

Budgeting for funds 32

Carrying forward of funds 33

Annual accounts and audit 34

Keeping financial records 35

Access to financial records 35

Acquiring and disposing of Publicly Funded Assets 35

Retaining proceeds from the disposal of capital assets 36

Transactions outside the usual planned range 36

Borrowing 37

5. LAND CLAUSES 37

Version 5: new freehold site provided by EFA with no legal charge

***6.* COMPLAINTS** 46

7. TERMINATION 46

Termination by either party 46

Termination Warning Notice 46

Termination by the Secretary of State after inspection 47

Termination by the Secretary of State 48

Change of Control 52

Funding and admission during notice period 52

Effect of Termination 53

8. OTHER CONTRACTUAL ARRANGEMENTS 54

Information 54

Access by the Secretary of State's Officers 54

Notices 55

General provisions 56

9. PUPILS WITH SPECIAL EDUCATIONAL NEEDS (SEN) AND DISABILITIES 58

10. ADMISSION OF PUPILS WITH SEN AND DISABILITIES 58

SUMMARY

Information about the Academy:

Name of Academy Trust	East Cheshire Youth Achievement Free School Limited
Company number	08827502
Name of academy	The Fermain Academy
Opening date	1 September 2015
Type of academy (indicate whether academy or free school)	Alternative Provision Free School
Name of predecessor school (where applicable)	N/A
Capacity	40
Age range	13-16
Number of sixth form places	0
Number of boarding places	0
SEN unit / Resource provision	N/A
Land arrangements (Version 1-7 or other)	4
Address and title number of Land	**Part of the unregistered land known as The Fermain Youth Club, Oxford Road, Macclesfield, Cheshire SK11 8JG**
Contact details for the Chair of Board of Charity Trustees	[redacted], East Cheshire Youth Achievement Free School Limited, 4 Rossmore Business Village, Ellesmere Port CH65 3EY

Name of Academy Trust	East Cheshire Youth Achievement Free School Limited

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

Clause No	Descriptor	Applied	Not used
1.19	Only applies to free schools and new provision academies	*	
2.13, 2.14	Only applies where the academy has an SEN unit		*
2.24	Only applies where the academy provides boarding		*
2.27	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		*
2.47	Clause only applies where the academy has not been designated with a religious character		*
3.25	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		*
3.26	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		*
4.5	Clause applies where the academy has 16-19 provision		*
4.5A	Clause only applies to free schools	*	
4.11	Clause to be included where relevant circumstances apply – and only in relation to academy converters		*
6.1 – 6.4	Clauses do not apply to free schools and new provision academies		*
7.8	Clause only applies to sponsored academies		*
7.15	Clause applies to free schools and may be applied to new provision academies	*	
7.16	Clause applies to free schools and may be applied to new provision academies	*	
7.17	Clause applies to free schools and may be applied to new provision academies	*	
7.18	Clause applies to free schools and may be applied to new provision academies	*	
7.19	Clause applies to free schools and may be applied	*	

Clause No	Descriptor	Applied	Not used
	to new provision academies		

Please identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI which will be supplied by your project lead if needed):

Descriptor	Clause No.	Applied	Not used

1 ESTABLISHING THE ACADEMY

Introduction to this agreement

1.1. This Agreement is between the Secretary of State for Education (the "**Secretary of State**") and East Cheshire Youth Achievement Free School Limited (the "**Academy Trust**"), and is an academy agreement as defined by section 1 of the Academies Act 2010.

1.2. The Academy Trust is a company limited by guarantee incorporated in England and Wales with company number 08827502. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.

1.3. In order for the Academy Trust to establish and run an independent school in England, according to the provisions of the Academies Act 2010, to be known as The Fermain Academy (the "**Academy**"), and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the requirements in this Agreement.

1.4. In this Agreement these capitalised words and expressions will have the following meanings:

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

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

"**the Academy**" means the Alternative Provision Academy which is an Academy or a Free School which meets the requirements set out in section 1C(1) of the Academies Act 2010.

"**Articles**" means the Academy Trust's articles of association.

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

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

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

“Commissioner” means local authorities and/or schools referring children/pupils to the Alternative Provision Academy for admission under the legal powers set out in clauses 2.25 to clauses 2.31.

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

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

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

“**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 5.3(a); and

iv. the notice in the proprietorship register referred to in clause 5.8(a).

“**EFA**” means the Education Funding Agency.

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

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

"LA" means a local authority.

"**Land**" means **part of the unregistered land** known as The Fermain Youth Club, Oxford Road, Macclesfield, Cheshire SK11 8JG, 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.

"**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.

"**Parents**" means parents or guardians.

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

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

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

"**Pupil Premium**" means the amount allocated by a local authority from the pupil premium grant to a school under the terms and conditions of the grant;

"**Pupil Premium Grant**" means a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of pupils who are entitled to a pupil premium;

"**Pupil Referral Unit (PRU)"** – means a school which meets the requirements set out in Section 19(2) of the Education Act 1996.

"**Prospective Pupils**" means those pupils who have been referred to the Academy and accepted a place.

Any reference to "**Secretary of State**" includes a reference to the EFA acting on the Secretary of State's behalf.

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

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

"Teaching Staff" means teachers and the principal or head teacher employed at the Academy.

"**Termination Notice**" means a notice sent by the Secretary of State to the Academy Trust, terminating this Agreement on the date specified in the notice.

"**Termination Warning Notice**" means a notice sent by the Secretary of State to the Academy Trust, stating his intention to terminate this Agreement.

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

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

1.7. Any words following the terms 'include', 'including' or 'in particular' are by way of illustration, not limitation.

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

1.9. References to this Agreement include any and all annexes.

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

a) the "school" refers to the Academy;

b) the "head teacher" may refer to the Academy's head teacher or principal;

c) the Academy Trust will be deemed to be the "responsible authorities"; and

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

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

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

General Obligations of the Academy Trust

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

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

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

a) the Articles;

b) any legislation or legal requirement that applies to academies, including the Independent School Standards and legislation about meeting the needs of pupils with SEN and disabilities;

c) the Academies Financial Handbook, as stated in clauses 4.6–4.8; and

d) this Agreement.

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

1.17. The Academy Trust must obtain the Secretary of State's consent before applying for the Academy to be designated as a school with religious character. The Secretary of State may at his discretion refuse or consent to the Academy Trust making such an application.

1.18. The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.47 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.

1.19. The Academy Trust is not required to publish information under this Agreement if to do so would breach its obligations under the Data Protection Act 1998.

Academy opening date

1.20. The Academy Trust will open the Academy on 1 September 2015.

Governance

1.21 The Academy will be governed by a board comprising the Charity Trustees of the Academy Trust (the "**Board of Charity Trustees**").

1.22. The Board of Charity Trustees must have regard to any Guidance on the governance of academy trusts.

1.23. The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.

1.24. The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

1.25. The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal or Charity Trustees or members ("the Governance Articles") without the Secretary of State's consent.

1.26. Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:-

a) the proposed amendment or removal; and

b) the reason for it.

1.27. If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

2. RUNNING OF THE ACADEMY

Length of school day and year

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

Teachers and staff

2.2. In complying with the Independent School Standards, the Academy Trust must require enhanced Disclosure and Barring Service ("**DBS**") certificates as appropriate for members of staff, supply staff, members of the Academy Trust, individual Charity Trustees and the chair of the Board of Charity Trustees.

2.3. The Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.

2.4. Subject to clauses 2.5 and 9.1 the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.5. The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, and in doing so must comply with the law, regulations and guidance that apply to maintained schools.

2.6. Teachers' pay and conditions of service are the responsibility of the Academy Trust.

2.7. The Academy Trust must ensure that all teachers employed at the Academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of this scheme and with Fair Deal for staff pensions guidance published by HM Treasury.

2.8. The Academy Trust must, in accordance with the Local Government Pension Scheme (Administration) Regulations 2013 and with Fair Deal for staff pensions guidance published by HM Treasury, ensure that all affected staff employed in the Academy other than teachers have access to the Local Government Pension Scheme, unless an individual expressly chooses to opt out of the Scheme in accordance with the regulations.

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

a) advise in writing whether or not, in the previous two years, there have been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;

b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

Pupils

2.10. The planned number of places at the Academy is 40 in the age range 13-16, places for pupils with a statement of special education needs naming The Fermain Academy, The planned number of places is/are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State.

2.11. Where the Academy Trust considers that there is a need to increase the overall planned number of places stated in clause 2.10, the Academy Trust must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Academy Trust.

2.12. The Academy Trust must ensure that the Academy meets the needs of individual pupils, including pupils with SEN and disabilities.

SEN unit

2.13. Not used

2.14. Not used

School meals

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

2.16. The Academy Trust must comply with school food standards legislation as if it were a maintained school.

2.17. Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

Pupil Premium

2.18. For each Academy Financial Year, if the Academy Trust receives a pupil premium allocation it must publish on the Academy's website, information about:

a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;

b) what it intends to spend its Pupil Premium allocation on;

c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year; and

d) the impact of the previous year's Pupil Premium allocation on educational attainment.

2.19. For each Academy Financial Year the Academy Trust must, where applicable, publish, on the Academy's website, information about:

a) the amount of year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;

b) what it intends to spend its year 7 literacy and numeracy catch-up premium grant on;

c) what it spent its year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year; and

d) the impact of the previous year's year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

Charging

2.20. The Academy Trust must comply with sections 402, 450-457 and 459-462 of the Education Act 1996 with regard to public examinations, charging, providing information, inviting voluntary contributions and recovering civil debts, as if the Academy were a maintained school.

2.21. There must be no charge to pupils (or their parents or guardians) for admission to or attendance at the Academy and the Academy will only charge pupils where the law allows maintained schools to charge.

2.22. Clauses 2.20 and 2.21 do not prevent the Academy Trust receiving funds/income from Commissioners in respect of the admission and attendance of a pupil at the Academy.

2.23. Notwithstanding clause 2.21, the Academy Trust may charge people who are not registered pupils at the Academy for education provided or use of facilities.

2.24. Not used.

Admissions

2.25. The Academy Trust will act in accordance with equalities law.

2.26. Except where clauses 2.27, 2.28, 9.1 or 10.1 apply, the Academy Trust may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in Clause 2.28.

2.27. Not used.

2.28. 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 this Agreement or has otherwise acted unlawfully; or

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

2.29. The Academy Trust may only admit a child of compulsory school age:

a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996;

b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006;

c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002 ;

d) referred by an Academy under general powers in the Articles of the Academy Trust for the purpose of improving the child's behaviour.

2.30. The Academy Trust shall have admission arrangements agreed with the Department which will include oversubscription criteria, a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils and an admission number for each relevant key stage. The Academy Trust will consult on its admission arrangements with relevant parties.

2.31. Any changes to admission arrangements proposed by the Academy Trust should be discussed with Commissioners and must be agreed with the Secretary of State.

Pupil registration and information sharing

2.32. The Academy Trust must ensure that pupils attending the academy are appropriately registered[1], in line with its legal duties and those of any other school that the pupil attends.

2.33. As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Academy Trust shall request appropriate information on the needs and prior attainment of pupils who will attend the Academy.

2.34. The Academy Trust will provide regular feedback to Commissioners (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

Objections and determinations

2.35. The Academy Trust must make clear when determining the Academy's admission arrangements, that objections should be submitted to the EFA or any successor to it.

2.36. A determination of an objection, by the EFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the Alternative Provision Academy.

Curriculum

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

2.38. The Academy Trust must ensure that the curriculum provided to pupils up to the age of 16 is balanced and broadly based, and includes English, mathematics and science.

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

a) the content of the curriculum;

b) its approach to the curriculum;

c) where applicable, the names of any phonics or reading schemes in operation for Key Stage 1;

[1] The requirements of section 434 of the Education Act 1996 (registration of pupils) and regulations made under that section apply to schools (which includes Academy schools and alternative provision Academies)

d) where applicable, the GCSE options and other Key Stage 4 qualifications, or other future qualifications specified by the Secretary of State, offered by the Academy; and

e) how parents (including parents of prospective pupils) and Commissioners can obtain more information about the Academy's curriculum.

2.40. The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Academy.

2.41. Where relevant to the curriculum the Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

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

2.43. The Academy Trust must ensure the Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.

2.44. The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.

2.45. The Academy Trust may provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.46. 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.

2.47. Not used.

2.48 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.

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

Assessment

2.50 The Academy Trust must:

a) ensure that pupils will be given the opportunity to be entered for examinations in line with the requirements on maintained schools in section 402 of the Education Act 1996;

b) comply with the relevant Guidance, as it applies to maintained schools, to ensure that, unless there are exceptional reasons to do otherwise, pupils at the Academy take part in assessments, and in teacher assessments of pupils' performance;

c) report on assessments as the Secretary of State requires, or provide any information on assessments, on the same basis that maintained schools are required to provide the information;

d) for all Key Stages, allow monitoring and moderation of the Academy's assessment arrangements as required by the Secretary of State.

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

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

a) where applicable, the Academy's most recent Key Stage 2 results as published by the Secretary of State in the School Performance Tables, broken down as follows:

i. "% achieving Level 4 or above in reading, writing and maths";

ii. "% making expected progress in reading", "% making expected progress in writing", and "% making expected progress in maths";

iii. in relation to reading, "% achieving Level 5 or above";

iv. in relation to writing, "% achieving Level 5 or above"; and

v. in relation to maths, "% achieving Level 5 or above";

b) where applicable, the Academy's most recent Key Stage 4 results as published by the Secretary of State in the School Performance Tables, broken down as follows:

i. "% achieving 5 + A* - C GCSEs (or equivalent) including English and maths GCSEs";

ii. "% achieving the English Baccalaureate"; and

iii. "% of pupils making expected progress";

c) information about where and how parents (including parents of prospective pupils) and Commissioners can access the most recent report about the Academy published by the Chief Inspector; and

d) information about where and how parents (including parents of prospective pupils) and Commissioners can access the School Performance Tables published by the Secretary of State.

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

3. GRANT FUNDING

Recurrent Expenditure grants

3.1. The Secretary of State will pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy.

3.2. "**Recurrent Expenditure**" means any money spent on the establishment, conduct, administration and maintenance of the Academy which does not fall within Capital Expenditure.

3.3. In respect of Recurrent Expenditure, the Secretary of State will pay **General Annual Grant** ("**GAG**"), and may additionally pay **Earmarked Annual Grant** ("**EAG**"). These are two separate and distinct grants.

3.4. Except with the Secretary of State's consent, the Academy Trust must not make commitments to spending which have substantial implications for future grant. No decision by the Academy Trust will commit the Secretary of State to paying any particular amount of grant.

Capital Grant

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

3.6. "**Capital Expenditure**" means expenditure on:

a) acquiring land and buildings;

b) erecting, enlarging, improving or demolishing any building including any fixed plant, installation, wall, fence or other structure, or any playground or hard standing;

c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;

d) buying vehicles;

e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;

f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;

g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary repairs and maintenance due to normal wear and tear;

h) works of a permanent character other than the purchase or replacement of minor day-to-day items;

i) any major repairs or replacements which are specified as capital expenditure in any grant letter relating to them;

j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;

k) professional fees properly and reasonably incurred in connection with the provision of any of the above; and

l) VAT and other taxes payable on any of the above.

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

3.8. The Academy Trust must spend Capital Grant only on items of Capital Expenditure approved by the Secretary of State and in accordance with conditions specified by the Secretary of State. Further, the Academy Trust must provide evidence that it has obtained all planning and other consents required for any proposed building and infrastructure development to be funded using Capital Grant.

3.9. In order to receive payments of Capital Grant, the Academy Trust must provide supporting invoices and certificates in the format specified by the Secretary of State.

3.10. The Academy Trust must provide an account of Capital Grant received, and associated spending on Capital Expenditure using Capital Grant, in the Academy Trust's financial statements and any other financial reports or returns that the Secretary of State may require.

3.11. If in its use of Capital Grant the Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State, or the project does not accord with the original specification or has not been completed, the Secretary of State may at his discretion not make any further payments of Capital Grant and require the Academy Trust to repay all or part of the Capital Grant.

General Annual Grant (GAG)

3.12. The Secretary of State will pay GAG to the Academy Trust as a contribution to the Academy's normal running costs or capital expenditure, including:

a) teachers' salaries and related costs (including pension contributions, full- and part-time teaching staff and payments in respect of seconded teachers);

b) non-teaching staff salaries and related costs (including pension contributions);

c) employees' expenses;

d) buying, maintaining, repairing and replacing teaching and learning materials and other educational equipment, including books and stationery;

e) buying, maintaining, repairing and replacing other assets including ICT equipment and software, sports equipment and laboratory equipment and materials;

f) examination fees;

g) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing and lighting); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract

cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;

h) medical equipment and supplies;

i) staff development (including in-service training);

j) curriculum development;

k) the costs of providing school meals for pupils (including the cost of providing free school lunches to pupils who are eligible to receive them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities;

l) administration; and

m) establishment expenses and other institutional costs.

3.13. GAG for each Academy Financial Year for the Academy will include:

a) funding equivalent to that which would be received by a PRU maintained by the local authority with similar characteristics, determined by the Secretary of State and taking account of the number of pupils and/or places at the Academy;

b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a school maintained by a local authority;

c) payments in respect of further, specific grants made available to schools maintained by the local authority, where the Academy meets the requisite conditions and criteria necessary for a school maintained by the local authority to receive these grants.

d) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and

e) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the alternative provision Academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

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

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

a) education and training for adults who are not pupils of the Academy, other than staff professional development;

b) nursery provision for which parents are charged a fee;

c) nursery provision to children outside the Academy's age range in clause 2.10;

d) Children's Centres; or

e) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

Calculation of GAG

3.16. The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, the intake of new pupils during the notice period may decline. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

Earmarked Annual Grant (EAG)

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

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

Arrangements for paying GAG and EAG

3.19. Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how they have been calculated.

3.20. The amount of GAG for an Academy Financial Year will be decided annually by the Secretary of State, and notified to the Academy Trust in a funding letter sent before the relevant Academy Financial Year begins (the "**Annual Letter of Funding**").

3.21. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as is practicable afterwards.

3.22. The Annual Letter of Funding will, as well as stating the grant amounts, set out how they have been calculated. It will not include grants which cannot be calculated in time because there is not enough information, or for other administrative reasons. Any such grants will be notified as soon as practicable.

3.23. The Secretary of State will pay GAG in monthly instalments on or before the first day of each month ("the relevant month"). The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.

3.24. If GAG or EAG is miscalculated:

a) because of a mistake by the Secretary of State, which leads to an underpayment to the Academy Trust, the Secretary of State will correct the underpayment in the same or subsequent Academy Financial Years;

b) because the Academy Trust provided incorrect information, which leads to an underpayment to the Academy Trust, the Secretary of State may

correct the underpayment in the same or subsequent Academy Financial Years;

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

Other relevant funding

3.25. Not used.

3.26. Not used.

3.27. The Academy Trust may receive additional funding from an LA under an agreement with that LA for the provision of support for pupils with SEN who require high levels of such support. The Academy Trust must ensure that all support required under that agreement is provided for those pupils.

4. FINANCIAL AND ACCOUNTING REQUIREMENTS

General

4.1. In order for the Secretary of State to provide grant funding to the Academy Trust, the Academy Trust must be fulfilling the financial and reporting requirements in this Agreement.

4.2. In its conduct and operation, the Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.

4.3. The Academy Trust must appoint an accounting officer and must notify the Secretary of State of that appointment. The Academy Trust must assign to the accounting officer the responsibilities of the role set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money'.

4.4. The Academy Trust must abide by the obligations of, and have regard to the guidance for, charities and charity trustees issued by the Charity Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities

from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to the body or person prescribed as the principal regulator under the Charities Act 2011.

4.5. Not used.

4.5A If the Secretary of State pays any grant to or on behalf of the Academy Trust which includes an amount to cover VAT, the Academy Trust shall, having paid the VAT, promptly submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC). Any failure by the Academy Trust to submit a VAT reclaim application to HMRC, or to pursue the application diligently, or to repay any reclaimed amount to the Secretary of State as soon as reasonably practicable following receipt will be taken into account by the Secretary of State in:

a) calculating and paying any subsequent grant to the Academy trust; or

b) adjusting GAG payable to the Academy Trust in subsequent Academy Financial Years.

Application of the Academies Financial Handbook

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

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

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

Budgeting for funds

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

a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or

b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.17; or

c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from each Academy Financial Year to the next.

4.10. The Academy Trust may spend or accumulate funds from private sources or public sources, other than grants from the Secretary of State. Any surplus from private or public sources other than grants from the Secretary of State must be separately identified in the Academy Trust's accounts.

4.11. Not used.

4.12. The Academy Trust's budget must be approved for each Academy Financial Year by the Board of Charity Trustees.

4.13. The approved budget must be submitted to the Secretary of State in a form, and by a date, to be notified by the Secretary of State.

Carrying forward of funds

4.14. At the end of any Academy Financial Year the Academy Trust may carry forward unspent GAG from previous Academy Financial Years without limit (unless a limit is specified in the Academies Financial Handbook, or otherwise specified in writing by the Secretary of State, in which case that limit will apply).

4.15. The Academy Trust must use any GAG carried forward only for the purposes of GAG as set out in this Agreement, or otherwise as specified in the Academies Financial Handbook or in writing by the Secretary of State.

4.16. Any additional grant made in accordance with clause 3.16, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice, may be carried forward without limitation or deduction until the circumstances set out in clause 3.16 cease to apply, or the Academy closes.

4.17. Any unspent grant not allowed to be carried forward under clauses 4.14-4.16 may be taken into account in the payment of subsequent grant.

Annual accounts and audit

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

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

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

b) additionally as the Secretary of State directs.

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

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

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

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

4.24. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding

Agreement and the names of its Charity Trustees and members. The Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

Keeping financial records

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

Access to financial records

4.26. The books of accounts and all relevant records, files and reports of the Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the DfE and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money assessments. The Academy Trust must give those officials and contractors reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

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

Acquiring and disposing of Publicly Funded Assets

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

a) acquire or dispose of freehold land;

b) take up or grant a lease of land;

c) dispose of any other class of capital asset,

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

4.29. The Academy Trust must give 30 days' notice to the Secretary of State, whether or not the circumstances require his approval, of its intention to take any of the actions in clause 4.28.

Retaining proceeds from the disposal of capital assets

4.30. Except as permitted in the Academies Financial Handbook, if the Academy Trust sells capital assets which were acquired or enhanced wholly or partly using payments made by or on behalf of HM Government, the Academy Trust must pay to the Secretary of State, at his request, an amount of the sale proceeds equivalent to the proportion of the original cost of the acquisition or enhancement which was met by or on behalf of HM Government.

4.31. If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from an LA, the Predecessor School or the Predecessor School's foundation, the Academy Trust must, if required by the Secretary of State, pay all or part of the sale proceeds to the LA or to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

Transactions outside the usual planned range

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

a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations; or

b) write off any debts or liabilities owed to it; or

c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)

above any values specified in the Academies Financial Handbook.

4.33. The Academy Trust must give the Secretary of State 30 days' notice, whether or not the circumstances require his consent, of its intention to do any of the actions in clause 4.32.

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

Borrowing

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

5. LAND CLAUSES

Debt

5.1. The Academy Trust must pay the Debt to the Secretary of State on termination of this Agreement or in accordance with clauses 5.10(b) or 5.17(b)(i) or on a sale of all or part of the Land with or without the Secretary of State's consent.

5.2. The Debt is secured by the Legal Charge.

Restrictions on Land transfer

5.3. 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

5.4. 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.

5.5. 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.

Property notices

5.6. 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.

Option

5.7. 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 5.10 or 5.17. 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

5.8. 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

5.9. 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

5.10. 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

5.11. If:

a) the Academy does not fill its planned number of places, as stated in clause 2.10, within 3 Academy Financial Years; or

b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 7.1; or

c) the Secretary of State considers that not all the 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.

Exercise of Rights

5.12. On termination of this Agreement, the Secretary of State may give notice that he intends to exercise his rights under clauses 5.7, 7.30 or 7.31 or under the Legal Charge. Any such notice must state which clause of this Agreement the Secretary of State intends to exercise, and is without prejudice to his right to exercise any other rights available to him.

5.13. 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 7.30(b); and

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

5.14. 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 4.31; and

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

5.15. If, on termination of this Agreement, the Secretary of State exercises his rights under clause 7.30, then:

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

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

5.16. If, on termination of this Agreement, the Secretary of State agrees under clause 7.31 that the Academy Trust may invest the proceeds from the sale of the 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.

5.17. 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 4.31) 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 4.31, 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 4.32, 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.

5.18. If the Secretary of State consents to the sale of the Land, subject to any of the conditions in clause 5.17(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 4.31; 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 4.31; 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 4.31, 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 4.32, 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.

5.19. 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 4.31; and

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

5.20. 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 4.31, 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

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

5.22. If the Academy Trust:

a) sells some or all of the Land in accordance with clause 5.17(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.

6. COMPLAINTS

6.1. Not used.

6.2. Not used.

6.3. Not used.

6.4. Not used.

7. TERMINATION

Termination by either party

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

Termination Warning Notice

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

a) the Academy Trust has breached the provisions of this Agreement; or

b) the standards of performance of pupils at the Academy are unacceptably low; or

c) there has been a serious breakdown in the way the Academy is managed or governed; or

d) the safety of pupils or staff is threatened, including by a breakdown of discipline.

7.3. A Termination Warning Notice served under clause 7.2 will specify:

a) the action the Academy Trust must take;

b) the date by which the action must be completed; and

c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

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

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

Termination by the Secretary of State after inspection

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

a) special measures are required to be taken in relation to the Academy; or

b) the Academy requires significant improvement,

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

7.6A Not used.

7.7. If the Secretary of State has served a Termination Warning Notice under clause 7.6 and:

a) has not received any representations from the Academy Trust by the date specified in the notice; or

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

he may serve a Termination Notice.

7.8. Not used

Termination by the Secretary of State

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

7.10. The Secretary of State may serve a Termination Notice if any of the following events occurs, or if he considers that there is a serious risk that any of them may occur:

a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement with its creditors; or

b) the Academy Trust proposes a voluntary arrangement within section 1 of the Insolvency Act 1986; or

c) the Academy Trust cannot pay its debts within the meaning of section 123 of the Insolvency Act 1986 with, for the purposes of this clause, section 123 (1)(a) of this Act having an effect as if £10,000 were substituted for £750. The Academy Trust will not be considered unable to pay its debts for the purposes of this clause if it is contesting any such demand in good faith ; or

d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or part of its undertakings, assets or income; or

e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within 15 business days; or

f) the Academy Trust has passed a resolution for its winding up; or

g) an order is made for the winding up or administration of the Academy Trust.

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

7.12. If

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

b) The Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

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

ii. serve a Termination Notice.

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

a) has been convicted of an offence;

b) has been given a caution in respect of an offence;

c) is subject to a relevant finding in respect of an offence; or

d) has engaged in relevant conduct,

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

7.14. For the purposes of clause 7.13:

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

i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;

ii. that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or

iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.

b) "relevant conduct" is conduct by a Charity Trustee or member of the Academy Trust which is:

i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or

ii. found to be in breach of professional standards by a professional body; or

iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Academy.

7.15. 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 22, the Secretary of State may:

a) require the Academy Trust not to open the Alternative Provision Academy until the number of prospective pupils has reached 22; or

b) serve a Termination Notice.

7.16. 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.

7.17. 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.

7.18. If full planning permission (including where relevant listed building consent) in respect of the Land has not been obtained by 10 September 2015, the Secretary of State may serve a Termination Notice.

7.19. 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,

the Secretary of State 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.

Change of Control

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

a) in the Control of the Academy Trust; or

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

7.21. Where a person ('P') is a member or director of a body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.

7.22. The Academy Trust must promptly notify the Secretary of State if there is a proposed or actual change of Control of the Academy Trust, or of a legal entity that Controls the Academy Trust.

7.23. When notifying the Secretary of State under clause 7.22, the Academy Trust must seek his agreement that, if he is satisfied with the change of Control, he will not exercise his right to terminate this Agreement under clause 7.20.

Funding and admission during notice period

7.24. If the Secretary of State serves a Termination Notice under clause 7.1, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.

7.25. If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 7.1, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

Effect of Termination

7.26. If this Agreement is terminated, the Academy will cease to be an academy within the meaning of sections 1 and 1C of the Academies Act 2010.

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

7.28. The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.

7.29. The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 7.27, may include:

a) staff compensation and redundancy payments;

b) compensation payments in respect of broken contracts;

c) expenses of disposing of assets or adapting them for other purposes;

d) legal and other professional fees; and

e) dissolution expenses.

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

a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or

b) if the Secretary of State directs that a transfer under clause 7.30(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their

subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

7.31. The Secretary of State may:

a) waive all or part of the repayment due under sub-clause 7.30(b) if the Academy Trust obtains his permission to invest the sale proceeds for its charitable purposes; or

b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

8. OTHER CONTRACTUAL ARRANGEMENTS

Information

8.1. The Academy Trust must promptly provide to the Secretary of State any information that he requests about the Academy Trust or the Academy, which he regards as necessary to fulfil his role and responsibilities.

8.2. The Secretary of State will give the Academy Trust any information it reasonably requires of him for the running of the Academy.

Access by the Secretary of State's Officers

8.3. The Academy Trust must allow DfE officials to enter the Academy at any reasonable time. All records, files and reports relating to the running of the Academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of the Board of Charity Trustees or any other meetings of Charity Trustees of the Academy Trust, but will withdraw from any discussion of the Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State.

8.4. The following documents must be provided to or the Secretary of State or any person nominated by the Secretary of State on request:

a) the agenda for every meeting of the Board of Charity Trustees or any committee to which it delegates any of its functions;

b) the draft minutes of every such meeting, if they have been approved by the chairman of that meeting;

c) the signed minutes of every such meeting; and

d) any report, document or other paper considered at any such meeting.

8.5. The Academy Trust may exclude from items provided under clause 8.4 any content relating to:

a) a named teacher or other person employed, or proposed to be employed, at the Academy;

b) a named pupil at, or candidate for admission to, the Academy; and

c) any matter which, the Academy Trust reasonably believes should remain confidential.

Notices

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

a) must be in writing (excluding email, except where agreed in advance) and in English;

b) must be delivered by hand or sent by pre-paid first-class post or other next working day delivery service;

c) will be deemed to have been received:

i. if delivered by hand, at the time when a delivery receipt is signed or when the notice is left at the address in paragraph (d), or

ii. if posted, at 9.00 am on the second working day after posting; and

d) must be sent to the party for the attention of the contact and at the address listed as follows (or to a different contact or address previously notified to the sending party, the change taking effect five business days after deemed receipt of the notice):

Name of party	**Position of contact**	**Address**

Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
Academy Trust	Chair of Board of Charity Trustees [redacted]	4 Rossmore Business Village, Ellesmere Port CH65 3EY

General provisions

8.7. The Academy Trust cannot assign this Agreement.

8.8. Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate it), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.

8.9. Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.

8.10. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.

8.11. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.

This Agreement was executed as a Deed on 16 March 2015

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

Director

and

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:

[redacted]

Duly Authorised

ANNEXES

9. PUPILS WITH SPECIAL EDUCATIONAL NEEDS (SEN) AND DISABILITIES

"**Statement of SEN**" means a statement made under section 324 of the Education Act 1996.

9.1. "**EHC plan**" means an Education, Health and Care plan made under sections 37 to 40 of the Children and Families Act 2014. 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.

9.2. Not used.

9.3. Not used.

9.4 Not used.

10. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

10.1. The Academy Trust must, subject to its right of appeal to the Secretary of State, admit all pupils with a Statement of SEN naming the Alternative Provision Academy.

10.2. Where an LA proposes to name the Academy in a Statement of SEN, it must give the Academy Trust written notice of this, stating why it considers the 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.

10.3. 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.

10.4. 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.

10.5. 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.

10.6. If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber, 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.

10.7. 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.

10.8. Clauses 10.1 to 10.7 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.

SCHEDULE B
MASTER FUNDING AGREEMENT
THE YOUTH ENGAGEMENT SCHOOLS TRUST

Department for Education

Academy and free school: master funding agreement

March 2018 v4

Contents

SUMMARY SHEET 4

1.INTRODUCTION 5

Definitions of types of Academies: 5

Other defined terms: 6

General Obligations of the Academy Trust 10

Governance 12

2.RUNNING OF THE ACADEMIES 14

Length of school day and year 14

Teachers and staff 14

School meals 15

Pupil Premium 16

Charging 17

Exclusions 18

Curriculum 18

Assessment 20

3.GRANT FUNDING 22

Recurrent Expenditure Grants 22

Capital Grant 22

General Annual Grant (GAG) 24

Earmarked Annual Grant (EAG) 26

Arrangements for paying GAG and EAG 27

Other relevant funding 28

4.FINANCIAL AND ACCOUNTING REQUIREMENTS 28

General 28

Application of the Academies Financial Handbook 29

Budgeting for funds 30

Carrying forward of funds 31

Annual accounts and audit 31

Keeping financial records 32

Access to financial records 32

Acquiring and disposing of Publicly Funded Assets 33

Retention of proceeds from the disposal of capital assets 33

Transactions outside the usual planned range 34
Borrowing 34
5.COMPLAINTS 35
6.TERMINATION 36
Termination by either party 36
Change of Control of the Academy Trust 39
7.OTHER CONTRACTUAL ARRANGEMENTS 39
Information 39
Access by the Secretary of State's Officers 40
Notices 41
Contractual 42

SUMMARY SHEET

Information about the Academy Trust:

Name of Academy Trust	The Youth Engagement Schools Trust
Address	Beswick Street, Macclesfield, Cheshire, England, SK11 8JG
Company Number	08827502
Contact details for the Chair of Charity Trustees	The Chair of Trustees Beswick Street, Macclesfield, Cheshire, England, SK11 8JG

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

Descriptor	**Clause No.**	**Applied**	**Not used**

1. INTRODUCTION

Introduction and definitions

1.1 This Agreement is between the Secretary of State for Education (the **"Secretary of State**") and The Youth Engagement Schools Trust (the **"Academy Trust**"), and is an academy agreement as defined by section 1 of the Academies Act 2010.

1.2 The Academy Trust is a company limited by guarantee incorporated in England and Wales with company number 08827502. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.

1.3 In order for the Academy Trust to establish and run a number of Academies in England, according to the provisions of the Academies Act 2010, and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the requirements in this Agreement and in each **Supplemental Agreement** that has been entered into by the Academy Trust and the Secretary of State in respect of each Academy.

1.4 In this Agreement, and (except as expressly provided otherwise) in each Supplemental Agreement, the capitalised words and expressions listed below will have the following meanings:-

Definitions of types of Academies:

An "**Academy**" is a school or educational institution established and run in accordance with the Academies Act 2010, and where this Agreement refers collectively to "**Academies**" run by the Academy Trust, this may include any of the following types of school or educational institution:

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

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

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

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

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

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

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

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

Other defined terms:

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

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

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

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

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

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

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

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

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

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

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

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

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

"**LA**" means a local authority.

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

"**Parents**" means parents[1] or guardians.

"**Predecessor School**" means the school which the Academy in question replaced, where applicable.

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

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

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

Any reference to "**Secretary of State**" includes a reference to the ESFA acting on the Secretary of State's behalf.

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

"**SEN**" means Special Educational Needs and 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**" has the meaning as defined in the relevant Supplemental Agreement.

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

"Teaching Staff" means teachers and the principal or head teacher employed at the Academy.

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

"**Termination Notice**" means a notice sent by the Secretary of State to the Academy Trust, terminating this Agreement and each Supplemental Agreement on the date specified in the notice.

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

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

1.7 Any words following the terms 'include', 'including' or 'in particular' are by way of illustration, not limitation.

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

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

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

a) "school" refers to the relevant Mainstream Academy, Alternative Provision Academy, or Special Academy, and "educational institution" refers, where the context so admits, to a 16-19 Academy;

b) the "head teacher" may refer to the Academy's head teacher or principal;

c) references to the "governing body" or "responsible authorities" will be taken to refer to the Academy Trust; and

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

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

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

General Obligations of the Academy Trust

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

a) for **Mainstream Academies**, those specified in Section 1A of the Academies Act 2010;

b) for **Alternative Provision Academies**, those specified in Section 1C of the Academies Act 2010;

c) for **16-19 Academies**, those specified in Section 1B of the Academies Act 2010;

d) for **Special Academies**, those specified in section 1A(2) of the Academies Act 2010, and:

i. the Academy Trust must ensure special educational provision is made at each of the Special Academies for one or more categories of SEN. These categories may include, but are not limited to: Specific Learning Difficulties, Moderate Learning Difficulties, Severe Learning Difficulties, Profound and Multiple Learning Difficulties, Behaviour Emotional Social and Development Needs, Speech Language and Communication Needs, Autistic Spectrum Disorder, Visual Impairment, Hearing Impairment, Multi-Sensory Impairment, Physical Disability;

ii. the Academy Trust may not refuse to admit a child whose statement of SEN names one of the Special Academies on the sole basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 1.13(d)(i) of this agreement.

iii. the Academy Trust must comply with all of the obligations imposed upon special academies by legislation, and with the obligations imposed upon the governing bodies of maintained special schools in Chapter 1 of Part 4 of the Education Act 1996.

iv. the Academy Trust must ensure that each Special Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; the facilities provided to assist access to the Academy by disabled pupils; and the plan prepared by the Academy Trust under paragraph 3 of Schedule 10 to the Equality Act 2010. Disabled pupils in this paragraph mean pupils who are disabled for the purposes of the Equality Act 2010.

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

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

a) the Articles;

b) any legislation or legal requirement that applies to academies, including the Independent School Standards and legislation about meeting the needs of pupils with SEN and disabilities;

c) the Academies Financial Handbook, as stated in clauses 4.6 to 4.8; and

d) this Agreement, and any and all Supplemental Agreements.

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

1.17 The Academy Trust must obtain the Secretary of State's consent before applying to have an Academy designated as a school with religious character. The Secretary of State may at his discretion refuse or consent to the Academy Trust making such an application.

1.18 Unless an Academy operated by the Academy Trust is designated as a school with a religious character under the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003, it agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.

1.19 The Academy Trust is not required to publish information under this Agreement, or any Supplemental Agreement, if to do so would breach its obligations under the Data Protection Act 1998.

1.20 The Academy Trust must ensure that its Academies meet the needs of individual pupils, including pupils with SEN and disabilities.

Governance

1.21 The Academy Trust will be governed by a board comprising the Charity Trustees of the Academy Trust (the "**Board of Charity Trustees**").

1.22 The Board of Charity Trustees must have regard to any Guidance on the governance of academy trusts.

1.23 The Academy Trust must ensure that it engages with the relevant Local Governing Body (if any) or representatives of each Academy, and that arrangements are in place for matters relating to the functioning of each

Academy to be brought to the attention of the Charity Trustees of the Academy Trust.

1.24 The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.

1.25 The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

1.26 If the Academy Trust establishes and maintains a Free School, it must, in addition to its obligations under clauses 1.24 and 1.25:

a) provide to the Secretary of State the names of all new or replacement Charity Trustees of the Academy Trust, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Charity Trustees they replaced as soon as is practicable and in any event within 14 days of their appointment or election; and

b) not appoint or elect any new or replacement Charity Trustees until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

1.27 The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members ("the Governance Articles") without the Secretary of State's consent.

1.28 Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:

a) the proposed amendment or removal; and;

b) the reason for it.

1.29 If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

2. RUNNING OF THE ACADEMIES

Length of school day and year

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

Teachers and staff

2.2 In complying with the Independent School Standards, the Academy Trust must require enhanced Disclosure and Barring Service ("DBS") certificates as appropriate for members of staff, supply staff, members of the Academy Trust, individual Charity Trustees and the chair of the Board of Charity Trustees.

2.3 The Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.

2.4 The Academy Trust must designate a staff member at each Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, or are no longer looked after by an LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.

2.5 Teachers' pay and conditions of service at the Academies are the responsibility of the Academy Trust.

2.6 The Academy Trust must ensure that all teachers employed in each Academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of the scheme and with Fair Deal for staff pensions guidance published by HM Treasury.

2.7 The Academy Trust must ensure that all affected staff employed by the academy trust other than teachers have access to the Local Government Pension Scheme in line with that Scheme's main regulations being the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014. Access to the Scheme must also be in accordance with HM Treasury's published guidance on New Fair Deal which sets out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers. These requirements don't apply if an individual chooses to opt out of the Scheme in line with the relevant legal provisions.

2.8 Where a member of the teaching staff employed at an Academy applies for a teaching post at another academy, a maintained school or a further education institution, the Academy Trust must at the request of the board of governors or academy trust of that other educational institution:

a) advise in writing whether or not, in the previous two years, there has been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;

b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

School meals

2.9 Subject to clause 2.12, the Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and

512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by a local authority were to any of its Academies.

2.10 The Academy Trust must comply with school food standards legislation as if its Academies were maintained schools.

2.11 Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

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

Pupil Premium

2.13 For all of its Academies eligible for Pupil Premium, and for each Financial Year, the Academy Trust must publish, on the Academy's website, information about:

a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;

b) what it intends to spend the Pupil Premium allocation on;

c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year;

d) the impact of the previous year's Pupil Premium allocation on educational attainment.

2.14 For all of its Academies eligible for Year 7 literacy and numeracy catch-up premium funding, and for each Academy Financial Year, the Academy Trust must publish, on the Academy's website, information about:

a) the amount of Year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;

b) what it intends to spend its Year 7 literacy and numeracy catch-up premium grant on;

c) what it spent its Year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year;

d) the impact of the previous year's Year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

Charging

2.15 For all its Academies except 16 to 19 Academies, the Academy Trust must comply with sections 402, 450-457 and 459-462 of the Education Act 1996 with regard to public examinations, charging, providing information, inviting voluntary contributions and recovering civil debts, as if its Academies were maintained schools.

2.16 There must be no charge for admission to or attendance at any of the Academies, and the Academies will only charge pupils where the law allows maintained schools to charge.

2.17 Clause 2.16 does not prevent the Academy Trust receiving funds from an LA or a charity in respect of the admission and attendance of a pupil with SEN to an Academy.

2.18 Notwithstanding clause 2.16, the Academy Trust may charge people who are not registered pupils at one of its Academies for education or use of facilities.

2.19 Where an Academy provides a pupil with board and lodging, the Academy Trust must not charge the parent of that pupil more than the cost to the Academy Trust of providing the board and lodging, except as required by the Fees, Charges and Levies guidance in HM Treasury's publication 'Managing Public Money'.

Exclusions

2.20 In respect of **Mainstream Academies, and Special Academies which admit pupils without statements of SEN**, the Academy Trust must, if asked to by an LA, enter into an agreement which has the effect that where:

a) the Academy admits a pupil who has been permanently excluded from a maintained school, the Academy itself or another academy with whom the LA has a similar agreement; or

b) the Academy Trust permanently excludes a pupil from the Academy,

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

Curriculum

2.21 The curriculum is the responsibility of the Academy Trust.

2.22 The Academy Trust must ensure that the curriculum provided in each Academy to pupils up to the age of 16 is balanced and broadly based. In respect of **Mainstream, Special Academies, UTCs and Studio Schools**, the Academy Trust must ensure that the curriculum includes English, mathematics, science and (subject to the provisions in clause 2.V of the Mainstream academy and free school: supplemental funding agreement), (subject to the provisions in clause 2.V of the UTC and Studio School supplemental funding agreement) and (subject to the provisions in clause 2.HH-JJ of the Special School: supplemental funding agreement) religious education. In respect of **Alternative Provision Academies** the Academy Trust must ensure that the curriculum includes English, mathematics and science.

2.23 The Academy Trust must publish information in relation to the current curriculum provision at each Academy on that Academy's website, including:

a) the content of the curriculum;

b) its approach to the curriculum;

c) if applicable, the GCSE options and other Key Stage 4 qualifications offered by each Academy and, if applicable, any other qualifications offered by each Academy;

d) the names of any phonics or reading schemes in operation for Key Stage 1 if applicable; and

e) how parents (including parents of prospective pupils) and Commissioners (if applicable) can obtain further information about that Academy's curriculum.

2.24 The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at an Academy.

2.25 The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory. In respect of any **Alternative Provision Academies** and **16-19 Academies**, the Academy Trust must do this where relevant to the curriculum.

2.26 The Academy Trust must ensure the Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.

2.26A The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.

2.27 The Academy Trust must ensure that careers guidance is provided at each of its Academies, in accordance with the requirements on maintained schools in the Education Act 1997.

Assessment

2.28 The Academy Trust must:

a) ensure that pupils and students at each of its Academies are entered for examinations, in line with the requirements on maintained schools in section 402 of the Education Act 1996;

b) comply with the relevant Guidance, as it applies to maintained schools, in respect of each **Mainstream Academy,** and each **Special Academy** to ensure that pupils take part in assessments, and in teacher assessments of pupils' performance; and must do so for each **Alternative Provision Academy** unless there are exceptional reasons to do otherwise;

c) ensure that students at each **16 to 19 Academy** take part in assessments of students' performance appropriate to the qualifications offered;

d) report on assessments as the Secretary of State requires, or provide any information on assessments, on the same basis that maintained schools are required to provide the information;

e) for all Key Stages, allow monitoring and moderation of the Academy's assessment arrangements as required by the Secretary of State.

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

2.30 Unless informed by the Secretary of State that alternative information must be published, the Academy Trust must ensure that the following information is published on the relevant Academy's website for each **Mainstream Academy**, for each **Alternative Provision Academy**, and where relevant for

each **Special Academy,** and in respect of sub-paragraph b) where relevant for each **Studio School**:

a) if applicable, the Academy's most recent Key Stage 2 results as published by the Secretary of State in the School Performance Tables:

   i. "% achieving Level 4 or above in reading, writing and maths";

   ii. "% making expected progress in reading", "% making expected progress in writing", and "% making expected progress in maths";

   iii. in relation to reading, "% achieving Level 5 or above"; and

   iv. in relation to writing, "% achieving Level 5 or above"; and

   v. in relation to maths, "% achieving Level 5 or above";

b) if applicable, the Academy's most recent Key Stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables:

   i. "% achieving 5 + A* - C GCSEs (or equivalent) including English and maths GCSEs";

   ii. "% achieving the English Baccalaureate"; and

   iii. "% of pupils making expected progress";

c) information about where and how parents (including parents of prospective pupils) can access the most recent report about the Academy published by the Chief Inspector; and

d) information as to where and how parents (including parents of prospective pupils) can access the School Performance Tables published by the Secretary of State.

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

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

3. GRANT FUNDING

Recurrent Expenditure Grants

3.1 The Secretary of State will pay grants towards Recurrent Expenditure, and may pay grants towards Capital Expenditure, for each Academy.

3.2 "**Recurrent Expenditure**" means any money spent on the establishment, conduct, administration and maintenance of an Academy which does not fall within Capital Expenditure.

3.3 In respect of Recurrent Expenditure, the Secretary of State will pay **General Annual Grant** ("**GAG**") and may additionally pay **Earmarked Annual Grant** ("**EAG**"). These are two separate and distinct grants.

3.4 Except with the Secretary of State's consent, the Academy Trust must not make commitments to spending which will have substantial implications for future grant. No decision by the Academy Trust will commit the Secretary of State to paying any particular amount of grant.

Capital Grant

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

3.6 "**Capital Expenditure**" means expenditure on:

a) acquiring land and buildings;

b) erecting, enlarging, improving or demolishing any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;

c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;

d) buying vehicles;

e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;

f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;

g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary repairs and maintenance due to normal wear and tear;

h) works of a permanent character other than the purchase or replacement of minor day-to-day items;

i) any major repairs or replacements which are specified as capital expenditure in any grant letter relating to them;

j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;

k) professional fees properly and reasonably incurred in connection with the provision of any of the above;

l) VAT and other taxes payable on any of the above.

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

3.8 The Academy Trust must spend Capital Grant only on items of Capital Expenditure approved by the Secretary of State and in accordance with conditions specified by the Secretary of State. Further, the Academy Trust

must provide evidence that it has obtained all planning and other consents required for any proposed building and infrastructure development to be funded using Capital Grant.

3.9 In order to receive payments of Capital Grant, the Academy Trust must provide supporting invoices and certificates in the format specified by the Secretary of State.

3.10 The Academy Trust must provide an account of Capital Grant received and associated spending on Capital Expenditure using Capital Grant in the Academy Trust's financial statements and any financial reports or returns that the Secretary of State may require.

3.11 If in its use of Capital Grant the Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State, or the project does not accord with the original specification or has not been completed, the Secretary of State may at his discretion not make any further payments of Capital Grant and require the Academy Trust to repay all or part of the Capital Grant.

General Annual Grant (GAG)

3.12 The Secretary of State will pay GAG to the Academy Trust towards the normal running costs or capital expenditure of each of its Academies, including:

a) teachers' salaries and related costs (including pension contributions, full and part-time teaching staff and payments in respect of seconded teachers);

b) non-teaching staff salaries and related costs (including pension contributions);

c) employees' expenses;

d) buying, maintaining, repairing and replacing teaching and learning materials and other educational equipment, including books and stationery;

e) buying, maintaining, repairing and replacing other assets including ICT equipment and software, sports equipment and laboratory equipment and materials;

f) examination fees;

g) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc.); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;

h) medical equipment and supplies;

i) staff development (including in-service training);

j) curriculum development;

k) the costs of providing school meals for pupils (including the cost of providing free school lunches to pupils who are eligible to receive them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities;

l) administration; and

m) establishment expenses and other institutional costs.

3.13 GAG for each Academy Financial Year for each **Mainstream Academy** and **Special Academy** will include:

a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and taking account of the number of pupils at the Academy;

b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a maintained school;

c) payment of any additional specific grants made available to maintained schools, where the Academy meets the criteria for those grants, and at the Secretary of State's discretion; and

d) funding for any other costs to the Academy which the Secretary of State considers necessary.

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

3.15 In particular (but without limitation) the Academy Trust must not use GAG for:

a) education and training for adults who are not pupils of the Academy, other than staff professional development and governance training and development;

b) nursery provision for which parents are charged a fee;

c) nursery provision to children outside of the relevant Academy's age range as stated in the applicable Supplemental Agreement;

d) Children's Centres;

e) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

Earmarked Annual Grant (EAG)

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

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

Arrangements for paying GAG and EAG

3.18 Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts in respect of each Academy which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how these have been calculated.

3.19 The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State, and notified to the Academy Trust in a funding letter sent before the relevant Academy Financial Year begins (the "**Annual Letter of Funding**").

3.20 Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as is practicable afterwards.

3.21 The Annual Letter of Funding will, as well as stating the grant amounts, set out how these have been calculated. It will not include grants which cannot be calculated in time because there is not enough information, or for other administrative reasons. Any such grants will be notified as soon as practicable.

3.22 The Secretary of State will pay GAG in monthly instalments on or before first day of each month ("the relevant month"), to fund the salaries and other payroll costs of all monthly paid employees and all other costs payable during the relevant month. The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.

3.23 If GAG or EAG is miscalculated:

a) because of a mistake by the Secretary of State, which leads to an underpayment to the Academy Trust, the Secretary of State will correct the underpayment in the same or subsequent Academy Financial Years;

b) because the Academy Trust provided incorrect information, which leads to an underpayment to the Academy Trust, the Secretary of State may correct the underpayment in the same or subsequent Academy Financial Years;

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

Other relevant funding

3.24. The Academy Trust may receive additional funding from an LA under an agreement with that LA for the provision of support for pupils with SEN who require high levels of such support. The Academy Trust must ensure that all support required under that agreement is provided for those pupils.

4. FINANCIAL AND ACCOUNTING REQUIREMENTS

General

4.1 In order for the Secretary of State to provide grant funding to the Academy Trust, the Academy Trust must be fulfilling the financial and reporting requirements in this Agreement, and any Supplemental Agreements.

4.2 In its conduct and operation, the Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.

4.3 The Academy Trust must appoint an accounting officer and must notify the Secretary of State of that appointment. The Academy Trust must assign to the accounting officer the responsibilities of the role set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money'.

4.4 The Academy Trust must abide by the requirements of, and have regard to the guidance for, charities and charity trustees issued by the Charity

Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to the body or person appointed as the principal regulator under the Charities Act 2011.

4.5 The Academy Trust must abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State, in respect of any provision for students who are above compulsory school age until the academic year in which they reach the age of 19.

4.5A If the Secretary of State pays any grant to or on behalf of the Academy Trust, in respect of any Free Schools that the Academy Trust establishes and maintains, which includes an amount to cover VAT, the Academy Trust shall, having paid the VAT, promptly submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC). Any failure by the Academy Trust to submit a VAT reclaim application to HMRC, or to pursue the application diligently, or to repay any reclaimed amount to the Secretary of State as soon as reasonably practicable following receipt will be taken into account by the Secretary of State in:

a) calculating and paying any subsequent grant to the Academy Trust; or

b) adjusting GAG payable to the Academy Trust in subsequent Academy Financial Years.

Application of the Academies Financial Handbook

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

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

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

Budgeting for funds

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

a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or

b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.16 and 3.L of the relevant Supplemental Agreement; or

c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that its Academies balance their respective overall budgets from each Academy Financial Year to the next.

4.10 The Academy Trust may spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for the benefit of the Academy Trust as it sees fit. Any surplus from private or public sources other than grants from the Secretary of State must be separately identified in the Academy Trust's accounts.

4.11 For clarity, and in accordance with the intent of parity of funding with LA maintained schools, in circumstances where a Predecessor School had a deficit balance and the DfE has settled this with the relevant LA, that amount will be recovered from the Academy Trust's GAG over a period not normally exceeding 3 years (unless the Secretary of State in his discretion decides otherwise) after the Academy opened.

4.12 The Academy Trust's budget must be approved for each Academy Financial Year by the Board of Charity Trustees.

4.13 The approved budget must be submitted to the Secretary of State in a form, and by a date, to be notified by the Secretary of State.

Carrying forward of funds

4.14 At the end of any Academy Financial Year the Academy Trust may carry forward unspent GAG from previous Academy Financial Years without limit (unless a limit is specified in the Academies Financial Handbook, or otherwise as specified in writing by the Secretary of State, in which case that limit will apply).

4.15 The Academy Trust must use any GAG carried forward only for purposes of GAG as set out in this agreement, or otherwise as specified in the Academies Financial Handbook or in writing by the Secretary of State.

4.16 Any additional grant provided for an Academy's Start-Up Period may be carried forward, without limitation or deduction, until the Start-Up Period ends.

4.17 Any unspent grant not allowed to be carried forward under clauses 4.14-4.16 and 3.L of the relevant Supplemental Agreement may be taken into account in the payment of subsequent grant.

Annual accounts and audit

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

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

a) in accordance with the Charity Commission's 'Accounting and Reporting by Charities: Statement of Recommended Practice', as if the Academy Trust was a registered charity; and

b) otherwise as the Secretary of State directs.

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

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

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

4.23 The Academy Trust's annual reports and accounts, and the auditor's reports, must be submitted to the Secretary of State by 31 December each Academy Financial Year, or as otherwise specified by the Secretary of State. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding Agreement and the names of its Charity Trustees and members. The Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

Keeping financial records

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

Access to financial records

4.25 The books of accounts and all relevant records, files and reports of the Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the DfE and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money studies. The Academy Trust must give those officials and contractors reasonable assistance with their enquiries. For the purposes of this clause

'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

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

Acquiring and disposing of Publicly Funded Assets

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

a) acquire or dispose of freehold land; or

b) take up or grant a leasehold of land; or

c) dispose of any other class of capital assets.

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

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

Retention of proceeds from the disposal of capital assets

4.29 Except as permitted in the Academies Financial Handbook, if the Academy Trust sells capital assets which were acquired or enhanced wholly or partly using payments made by or on behalf of HM Government the Academy Trust must pay to the Secretary of State, at his request, an amount of the sale proceeds equivalent to the proportion of the original cost of the acquisition or enhancement which was met by or on behalf of HM Government.

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

School's foundation, the Academy Trust must, if required by the Secretary of State, pay all or part of the sale proceeds to the LA or to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

Transactions outside the usual planned range

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

a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations;

b) write off any debts or liabilities owed to it; or

c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)

if the value of those transactions would be above any threshold specified in the Academies Financial Handbook.

4.32 The Academy Trust must give the Secretary of State 30 days' notice (or such shorter period as the Secretary of State may agree) of its intention to take any of the actions in clause 4.31 (a) – (c) regardless of whether the Secretary of State's consent is required.

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

Borrowing

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

5. COMPLAINTS

5.1 With regards to a **Mainstream Academy**, **a Special Academy** an **Alternative Provision Academy** or **a 16-19 Academy**, if a complaint is made about matters arising wholly or partly before the Academy opened, and all or part of that complaint was investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("**Part III**"), or could have been investigated under Part III if the Predecessor School/Pupil Referral Unit had remained a maintained school/Pupil Referral Unit, the Academy Trust:

a) must abide by the provisions of Part III as if the Academy were a maintained school/Pupil Referral Unit;

b) agrees that the Secretary of State will have the power to investigate the subject of the complaint as if it had taken place after the Academy opened; and

c) must act in accordance with any recommendation from the Secretary of State as if that recommendation had been made under Part III and the Academy were a maintained school/Pupil Referral Unit.

5.2 With regards to a **Mainstream Academy,** a **Special Academy** or a **16-19 Academy**, if the Secretary of State could have given an order or a direction under section 496 or 497 of the Education Act 1996 to the governing body of the Predecessor School and that order or direction related to matters occurring within the 12 months immediately before the Academy opened, the Academy Trust:

a) agrees that the Secretary of State may give orders or directions to the Academy Trust as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school; and

b) must act in accordance with any such order or direction from the Secretary of State.

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

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

6. TERMINATION

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

Termination by either party

6.2 The Secretary of State may serve a Termination Notice if any of the following events occur, or if he considers that there is a serious risk that any of them may occur:

a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement with its creditors; or

b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or

c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 will have effect as if £10,000 was substituted for £750. The Academy Trust will not be deemed unable to pay its debts for the purposes of this clause if

any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or

d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or part of its undertakings, assets or income; or

e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within 15 business days; or

f) the Academy Trust has passed a resolution for its winding up; or

g) an order is made for the winding up or administration of the Academy Trust.

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

6.4 If

a) any Charity Trustee or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or

b) the Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

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

ii. serve a Termination Notice.

6.5 For the purposes of clause 6.4 a Charity Trustee or member of the Academy Trust will be “unsuitable” if that Charity Trustee or member:

a) has been convicted of an offence;

b) has been given a caution in respect of an offence;

c) is subject to a relevant finding in respect of an offence; or

d) has engaged in relevant conduct,

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

6.6 For the purposes of clause 6.5:

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

i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;

ii. that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or

iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.

b) “relevant conduct” is conduct by a Charity Trustee or member of the Academy Trust which is:

i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or

ii. found to be in breach of professional standards by a professional body; or

iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Academy.

Change of Control of the Academy Trust

6.7 The Secretary of State may at any time, subject to clause 6.8, serve a Termination Notice if there is a change:

a) in the Control of the Academy Trust; or

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

6.8 Where a person ('P') is a member or director of a body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.

6.9 The Academy Trust must promptly notify the Secretary of State if there is a proposed or actual change of Control of the Academy Trust, or of a legal entity that Controls the Academy Trust.

6.10 When notifying the Secretary of State further to clause 6.9, the Academy Trust must seek his agreement that, if he is satisfied with the change of Control, he will not exercise his right to terminate this Agreement further to clause 6.7.

7. OTHER CONTRACTUAL ARRANGEMENTS

Information

7.1 The Academy Trust must promptly provide to the Secretary of State any information about the Academy Trust, or any of its Academies, which he regards as necessary to fulfil his role and responsibilities.

7.2 The Secretary of State will give the Academy Trust any information it reasonably requires of him for the running of its Academies.

Access by the Secretary of State's Officers

7.3 The Academy Trust must allow DfE officials to enter any of its Academies at any reasonable time. All records, files and reports relating to the running of each Academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of each Academy's Local Governing Body, of the Academy Trust's Board of Charity Trustees or any other meetings of the Charity Trustees of the Academy Trust, but will withdraw from any discussion of an Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State.

7.4 The following documents must be provided to the Secretary of State or any person nominated by the Secretary of State on request:

a) the agenda for every meeting of the Board of Charity Trustees, any Local Governing Body or any committee to which the Board of Charity Trustees delegates any of its functions;

b) the draft minutes of every such meeting, if they have been approved by the chairman of that meeting;

c) the signed minutes of every such meeting; and

d) any report, document or other paper considered at any such meeting.

7.5 The Academy Trust may exclude from items provided under clause 7.4 any content relating to:

a) a named teacher or other person employed, or proposed to be employed, at any Academy;

b) a named pupil or student at, or candidate for admission to, any Academy; and

c) any matter which the Academy Trust reasonably believes should remain confidential.

Notices

7.6 A notice or communication given to a party in connection with this Agreement or any Supplemental Agreement:

a) must be in writing (excluding email, except where agreed in advance) and in English;

b) must be delivered by hand or sent by pre-paid first-class post or other next working day delivery service;

c) will be deemed to have been received:

i. if delivered by hand, at the time when a delivery receipt is signed or when the notice is left at the address in paragraph (d), or

ii. if posted, at 9.00am on the second working day after posting; and

d) must be sent to the party for the attention of the contact and at the address listed as follows (or to a different contact or address previously notified to the sending party, the change taking effect five working days after deemed receipt of the notice):

Name of party	**Position of contact**	**Address**
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT
[Academy Trust name]	[Position]	[Address]

Contractual

7.7 This Academy Trust cannot assign this Agreement.

7.8 Failure to exercise, or delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.

7.9 Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.

7.10 This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.

7.11 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.

This Agreement was executed as a Deed on [DATE]

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

……..	and	……..
Director		**Director**
	or	……..
		Company Secretary
	or	……..
		Witness
		Name:
		Address:

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

……..

Duly Authorised

Department for Education

© Crown copyright 2018

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

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/2

email psi@nationalarchives.gsi.gov.uk

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

About this publication:

enquiries www.education.gov.uk/contactus

download www.gov.uk/government/publications

Reference: DFE-00438-2014

Follow us on Twitter: @educationgovuk

Like us on Facebook: facebook.com/educationgovuk

SCHEDULE C
SUPPLEMENTAL FUNDING AGREEMENT
THE YOUTH ENGAGEMENT SCHOOLS TRUST

Department for Education

Alternative provision academy and free school: supplemental funding agreement

March 2018

Contents

SUMMARY SHEET **4**

Information about the Academy: 4

1. ESTABLISHING THE ACADEMY **7**

Definitions and interpretation 7

The Academy 8

2. RUNNING OF THE ACADEMY **9**

Teachers and staff 9

Pupils 9

SEN unit 10

Charging 10

Admissions 10

3. GRANT FUNDING **13**

General Annual Grant (GAG) 13

Calculation of GAG 14

Other relevant funding 14

4. LAND **14**

5. TERMINATION **25**

Termination by either party 25

Termination Warning Notice 25

Termination by the Secretary of State after inspection 26

Termination by the Secretary of State 27

Funding and admission during notice period 27

Notice of intention to terminate by Academy Trust 28

Effect of termination 30

6. OTHER CONTRACTUAL ARRANGEMENTS 31

Annexes 31

The Master Agreement 31

General 32

ANNEXES 34

SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	The Youth Engagement Schools Trust
Company number	08827502
Date of Master Funding Agreement	
Name of academy	The Fermain Academy
Opening date	1 September 2015
Type of academy (indicate whether academy or free school)	Alternative Provision Free School
Name of predecessor school (where applicable)	N/A
Capacity number	60
Age range	13-16
Number of sixth form places	Nil
Number of boarding places	Nil
SEN unit / Resource provision	N/A
Land arrangements **(Version 1-8 or other)**	Part of the Fermain Youth Club, Oxford Road, Macclesfield, SK11 8JG with title number CH635980 Version 4
Address and title number of Land	Beswick Street, Macclesfield, Cheshire, England, SK11 8JG

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.D, 2.E	Only applies where the academy has an SEN unit		X
2.F	Only applies where there was a predecessor independent school		X
2.I	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		X
2.U	Clause *reflects the requirements for religious education and daily collective worship*	X	
3.C	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.D	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/boarding 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

Clause No.	Descriptor	Applied	Not used
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

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):

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

Descriptor	Clause No.	Applied	Not used

1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and The Youth Engagement Schools Trust is supplemental to the master funding agreement made between the same parties and dated 2019 (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 The Fermain Academy.

"**the Academy**" means the Alternative Provision Academy which is an Academy or a Free School which meets the requirements set out in section 1C(1) of the Academies Act 2010 .

"**Commissioner**" means local authorities and/or schools referring children/pupils to the Alternative Provision Academy for admission under the legal powers set out in clauses 2.G to clauses 2.M.

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

"**Prospective Pupils**" means those pupils who have been referred to the Academy and accepted a place.

Pupil Premium" means the amount allocated by a local authority from the pupil premium grant to a school under the terms and conditions of the grant;

"**Pupil Premium Grant**" means a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of pupils who are entitled to a pupil premium;

"**Pupil Referral Unit (PRU)**" means an Academy or Free School which meets the requirements set out in Section 19(2) of the Education Act 1996.

"**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.

"**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 Alternative Provision 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 2015.

1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.U 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.

1.J Further to clause 1.13(b) of the Master Agreement the Academy Trust must ensure that the educational provision is made at the Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.

2. RUNNING OF THE ACADEMY

Teachers and staff

2.A Subject to clause 2.A.1 and 7.A of this Agreement (if used), 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 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, or are no longer looked after by an LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.

Pupils

2.B The planned number of places at the Academy is 60 places in the age range 13-16 for pupils with a statement of special educational needs naming The Fermain Academy. The planned number of places is not determinative of GAG. GAG for each Academy Financial Year will be determined by the

Secretary of State in accordance with clauses 3.12 and 3.15 of the Master Agreement.

2.C Where the Company considers that there is a need to increase the overall planned number of places stated in clause 2.B, the Company must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Company.

SEN unit

2.D Not used.

2.E Not used.

Charging

2.F Not used.

Admissions

2.G The Academy Trust will act in accordance with equalities law

2.H Except where clauses 2.I, 2.J, 7.A and 8.A apply, the Academy Trust may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in Clause 2.J

2.I Not used.

2.J 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 no longer meet the requirements at 1C of the Academies Act, do not comply with this Agreement, or are otherwise unlawful.

2.K The Academy Trust may only admit a child of compulsory school age:

a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.

b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.

c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002.

d) referred by an Academy under general powers in the Articles of the Academy Trust for the purpose of improving the child's behaviour.

2.L The Academy Trust shall have a referral policy**,** the initial policy to be agreed with the Department. Any referral policy will include the number of places to be provided, the age range of pupils, the oversubscription criteria, and a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils. The Academy Trust will consult on any changes to its referral policy with key stakeholders including the local authority, local schools, any other school or local authority which has previously commissioned places and any other relevant parties.

2.M Any changes to admission arrangements proposed by the Academy Trust should be discussed with Commissioners and must be agreed with the Secretary of State.

Pupil registration and information sharing

2.N The Academy Trust must ensure that pupils attending the Academy are appropriately registered, in line with its legal duties and those of any other school that the pupil attends.

2.O As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Academy Trust shall request appropriate information on the needs and prior attainment of pupils who will attend the Academy.

2.P The Academy Trust will provide regular feedback to Commissioners (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

Objections and determinations

2.Q The Academy Trust must make clear when determining the Academy's admission arrangements, that objections should be submitted to the ESFA or any successor to it.

2.R A determination of an objection, by the ESFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the Academy.

Curriculum

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

2.T 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.U]**.**

[Clause 2.U reflects the requirements for religious education and daily collective worship – If this clause does not apply, mark clause as 'Not used']

2.U Not used.

2.V 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.W 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

General Annual Grant (GAG)

3.A GAG for each Academy Financial Year for the Academy will include:

a) funding equivalent to that which would be received by a PRU maintained by the local authority with similar characteristics, determined by the Secretary of State and taking account of the number of pupils and/or places at the Academy;

b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a school maintained by a local authority;

c) payments in respect of further, specific grants made available to schools maintained by the local authority, where the Academy meets the requisite conditions and criteria necessary for a school maintained by the local authority to receive these grants.

d) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and

e) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the Academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

Calculation of GAG

3.B The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, or otherwise terminates the Master Agreement, the intake of new pupils during the notice period may decline. 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.C Not used.

3.D Not used.

Carrying forward of funds

3.E Any additional grant made in accordance with clause 3.B, 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.B 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 forming part of theThe Fermain Youth Club, Oxford Road, Macclesfield, SK11 8JG, being part of the land registered with title number CH635980 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.

"**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 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.

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.

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.I 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 fill its planned number of places, as stated in clause 2.B, within 3 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.

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.

e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

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

a) the action the Academy Trust must take;

b) the date by which the action must be completed; and

c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

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

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

Termination by the Secretary of State after inspection

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

a) special measures are required to be taken in relation to the Academy; or

b) the Academy requires significant improvement

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

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

5.G.1 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 Not used.

5.O Not used.

Funding and admission during notice period

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

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

Notice of intention to terminate by Academy Trust

5.R The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the **"Funding Allocation").**

5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the "**Critical Year**") and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement on 31 August before the Critical Year.

5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:

a) the grounds upon which the Academy Trust's opinion is based, including:

i. evidence of those grounds;

ii. any professional accounting advice the Academy Trust has received;

iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and

b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and

c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

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

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

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

5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the

issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.

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

Effect of termination

5.Z If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1C of the Academies Act 2010.

5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.

5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.

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

a) staff compensation and redundancy payments;

b) compensation payments in respect of broken contracts;

c) expenses of disposing of assets or adapting them for other purposes;

d) legal and other professional fees; and

e) dissolution expenses.

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

a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or

b) if the Secretary of State directs that a transfer under clause 5.DD(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

5.EE The Secretary of State may:

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

b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

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

General

6.C The Academy Trust cannot assign this Agreement.

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.

This Agreement was executed as a Deed on

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

……..	and	……..
Director		**Director**
	or	……..
		Company Secretary
	or	……..
		Witness
		Name:
		Address:

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

……..

Duly Authorised

ANNEXES

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

"**EHC plan**" means an Education, Health and Care plan made under section 37 of the Children and Families Act 2014.

7.A 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 Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination as to whether the LA acted unreasonably will be final, subject to any right of appeal which a parent of the pupil may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

.

8. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS

(Clauses 8.A-8.G only apply where the pupil has a statement of special educational needs (SEN) rather than an EHC plan and where they therefore continue to be subject to the relevant provisions of the Education Act 1996. EHC plans are replacing statements of SEN but although all statements of SEN should have been converted to an EHC plan by the 1 April 2018 this clause is retained to protect pupils who still have a statement of special education need after this date. The detail on the drafting of a statement below is retained to protect pupils in exceptional circumstances.)

"**Statement of SEN**" means a statement made under section 324 of the Education Act 1996.

8.A The Academy Trust must admit all children with a Statement of SEN naming the Academy.

8.B The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.

8.C Where the LA sends the Academy Trust a draft statement with a proposal that the Academy is named in the final statement, the Academy Trust must respond within 15 working days unless the time period falls within a school holiday that is longer than two weeks in which case the Academy Trust should respond within 15 working days of the end of the school holiday.

8.D In its response the Academy Trust must either:

a. consent to being named in the final statement or

b. explain why it believes that admitting the child would be incompatible with the provision of efficient education for other children and the efficient use of resources, including why no reasonable steps could secure compatibility. In doing so the Academy Trust must have regard to the relevant legislation and Code of Practice. 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. The final decision as to whether to name the Academy falls to the LA.

8.E If the Academy Trust considers that the LA should not have named the Academy in the statement of SEN, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination 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) or the Upper

Tribunal Administrative Appeals Chamber, 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.G 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

© Crown copyright 2014

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

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/2

email: psi@nationalarchives.gsi.gov.uk.

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

About this publication:

enquiries www.education.gov.uk/contactus.

download www.gov.uk/government/publications.

Reference: DFE-00724-2014

Follow us on Twitter: @educationgovuk

Like us on Facebook: facebook.com/educationgovuk