



Department  
for Education

# **16 to 19 academy and free school: single funding agreement**

**March 2018 v2**

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## SUMMARY

### Information about the Academy:

<b>Name of Academy Trust</b>	
<b>Company number</b>	
<b>Name of academy</b>	
<b>Opening date</b>	
<b>Type of academy (indicate whether free school, academy, etc)</b>	
<b>Name of predecessor institution (where applicable)</b>	
<b>Capacity</b>	
<b>Age range</b>	
<b>Number of boarding places</b>	
<b>Land arrangements (Version 1-8 or other)</b>	
<b>Address and title number of Land</b>	
<b>Contact details for the Chair of Board of Charity Trustees</b>	

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

Clause No	Descriptor	Applied	Not used
1.18	Only applies to free schools and new provision academies		
2.18	Only applies where there was a predecessor institution		
2.19	Only applies where the academy provides boarding		
3.20	Clause does not apply to academy converters		
3.30	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		
3.31	Clause does not apply to free schools (unless there was a predecessor institution), or new provision academies		
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		
4.16	Clause only applies where a Start-Up period applies to the academy		
6.1 – 6.4	Clauses do not apply to free schools and new provision academies		
7.6A	Clause applies only to a boarding academy/boarding free school		
7.8	Clause only applies to sponsored academies		
7.14	Clause applies to free schools and may be applied to new provision 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		

**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 ESTABLISHING THE ACADEMY

### Introduction to this agreement

- 1.1. This Agreement is between the Secretary of State for Education (the “**Secretary of State**”) and [NAME] (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 [●]. 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 educational institution in England, according to the provisions of the Academies Act 2010, to be known as [NAME] (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 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.

“**Awarding organisations**” means organisations referred to as such by Ofqual.

“**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.



“**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”

References to “**educational institution**” shall where the context so admits be references to the Academy.

“**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.

“**Individualised Learner Record**” is a dataset that collects information on learners and their learning in the Further Education system in England

“**LA**” means a local authority.

“**National Minimum Standards**” *[This definition should be removed if the academy or free school does not provide boarding]*<sup>1</sup> means the accommodation of students under eighteen by further education colleges: National Minimum Standards, Inspection Regulations published by the Department for Health under section 87C(1) of the Children Act 1989 as amended by the Care Standards Act 2000.

“**Parents**” means parents<sup>2</sup> or guardians.

“**Predecessor Institution**” means the educational institution which the Academy has replaced, where applicable.

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<sup>1</sup> Throughout document remove instructions set out in bold, italics

<sup>2</sup> Parent” has the meaning set out in section 576 of the Education Act 1996.

**“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.

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 section 20 (1) and 21(2) of the Children and Families Act 2014.

**“Start-Up Period”** [*This definition should be removed if all pupil cohorts relevant to the age-range of the academy will have some students present on the academy opening date. It will normally apply to free schools with the exception of free schools which had previously been independent schools who are not expanding their capacity and will not be in receipt of start-up/post opening grant*] means a period of two Academy Financial Years (and for the avoidance of doubt the calculation of student number count provided at clause 3.17 will be used for the third academic year in which the Academy is open, and for each year thereafter).

**“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 “further education institution” or “the institution” 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 students will be treated as references to registered students 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 1B 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 16 to 19 academies, including national minimum standards and legislation about meeting the needs of students with SEN and disability
  - c) the Academies Financial Handbook, as stated in clauses 4.6–4.8; and
  - d) this Agreement.
- 1.16. The Academy Trust agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.
- 1.17. The Academy Trust must ensure that, so far as is reasonably practicable, learning takes place in safe, healthy and supportive environments, which meet the needs of students.
- 1.18. [***This clause applies only to free schools and new provision academies – otherwise mark clause 1.18 as ‘Not used’***] The Academy Trust must ensure that so far as is reasonably practicable and consistent with this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable students of all faiths and none to play a full part in the life of the Academy, and do not disadvantage students or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of students 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 [DATE].
- 1.21. The Academy Trust agrees that, prior to the Academy opening date, the Academy is an institution for the purposes of the Chief Inspector's duties under sections 118(2) and 125 of the Education and Inspections Act 2006 and, accordingly, the Chief Inspector may inspect the Academy before that date.

## Governance

- 1.22. The Academy will be governed by a board comprising the Charity Trustees of the Academy Trust (the "**Board of Charity Trustees**").
- 1.23. The Board of Charity Trustees must have regard to any Guidance on the governance of academy trusts.
- 1.24. The Academy Trust must provide to the Secretary of State the names of all new or replacement [\*Charity Trustees and] members 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 Trustee or] member they replaced as soon as is practicable and in any event within 14 days of their appointment [\*or election].
- 1.25. The Academy Trust must not appoint any new or replacement [\*Charity Trustees or] 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. 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.
- 1.27. 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.

1.28. 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.

*[\*The words in square brackets must be included for free schools]*

## 2. RUNNING OF THE ACADEMY

### **Length of academy day and year**

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

### **Teachers and staff**

2.2. The Academy Trust must comply with the obligations that apply to it by virtue of the Safeguarding and Vulnerable Groups Act 2006 in respect of, but not limited to, the performance of barred list checks.

2.3. The Academy Trust must comply with the Further Education (Providers of Education)(England) Regulations 2006 (SI 2006/3199) as if the Academy were a further education institution subject to the following modifications:

- a) references to “a further education institution” or “the institution” shall be treated as references to the Academy, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;
- b) the Academy Trust is not obliged to comply with any of the requirements in relation to staff qualifications namely, in section 3(2), section 5(3); section 17(1) only in so far as it relates to section 18(3); section 22 only in so far as it relates to paragraph 4 of Part 1 of the Schedule. For the avoidance of doubt, the relevant staff qualification requirements do not need to be met by members of staff at the Academy; and

- c) references to “new member of staff” shall include individual Charity Trustees and the Chair of the Board of Charity Trustees and in respect of them:
    - i. the obligation to carry out an enhanced disclosure and barring service check as provided for in section 5(5) will apply whether or not their position will involve a relevant activity;
    - ii. the reference in section 6 to “considering his suitability for a position that will involve a relevant activity” will be treated as a reference to considering his suitability for a position as a Charity Trustee or Chair of the Board of Charity Trustees, as appropriate;
    - iii. references to “beginning work at the further education institution” shall be treated as references to beginning work as a Charity Trustee or Chair of the Board of Charity Trustees, as appropriate;
    - iv. where the Academy Trust is required to carry out an enhanced disclosure and barring service check in respect of the Chair of the Board of Charity Trustees it must be counter signed by the Secretary of State.
- 2.4. The Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.
- 2.5. Subject to clause 2.6 and section 67 of the Children and Families Act 2014 the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for students, teach students, and assess and report on students’ development, progress and attainment.
- 2.6. 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.

- 2.7. Pay and conditions of service for all staff, including teachers, are the responsibility of the Academy Trust.
- 2.8. 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.
- 2.9. The Academy Trust must ensure that all affected staff employed in the Academy 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.
- 2.10. Where a member of the Teaching Staff employed at the 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 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.



## **Students**

- 2.11. The planned capacity of the Academy is [insert] places in the age range [insert] [and] including [insert] boarding places ]
- 2.12. The Academy Trust must ensure that the Academy meets the needs of individual pupils, including students with SEN and disability.
- 2.13. Where secondary education is provided to persons of compulsory school age by the 16 to 19 Academy the Academy Trust shall secure that, except when a teacher is present in the room, no education is provided to a person who has attained the age of nineteen years at the start of the academic year (31 August), in a room in which any persons of compulsory school age are for the time being receiving secondary education. A teacher will be considered to be present in the room at a particular time even though no teacher is present if:
- a) it would be impracticable to secure the presence of a teacher in a room at that time; and
  - b) the absence of a teacher at that time has not lasted more than five minutes,

## **Meals**

- 2.14. The Academy Trust must comply with any guidance in relation to free meals in the further education sector, as far as it applies to the Academy.

## **Charging**

- 2.15. The Academy will only make charges where institutions within the further education sector are permitted to as set out in the current 16 to 19 Funding Guidance published by the Secretary of State, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable.
- 2.16. There must be no charge for admission to or attendance at the Academy and the Academy will only charge students where the law allows institutions within the further education sector to charge.

- 2.16A 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 the Academy.
- 2.17. Notwithstanding clause 2.16, the Academy Trust may charge people who are not registered students at the Academy for education provided or use of facilities.
- 2.18. [***This clause only applies where there was a predecessor institution – otherwise mark clause 2.18 as ‘Not used’***]The Academy Trust must charge fees for the full cost of the education provided at an Academy to non-European Economic Area students who:-
- a) have a valid United Kingdom visa the terms of which state that the relevant student cannot access non-fee paying education; or
  - b) no longer have a valid United Kingdom visa allowing them to enter or remain in the United Kingdom but are applying to renew such a visa; and in each case
  - c) transferred to the Academy from any predecessor institution.

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

- 2.19. [***This clause applies only to boarding academies – otherwise mark clause 2.19 as ‘Not used’***]Where the Academy provides a student with board and lodging, the Academy Trust must not charge the parent of that student 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’.

## **Admissions**

- 2.20. The Academy will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of

persons over compulsory school age but under 19, at the start of the academic year (31 August), whose requirements for:

- a) the admission of students to the Academy;
- b) the admission to the Academy and support for students with SEN and disability ; and
- c) student exclusions,

are set out in written policies to be agreed by the Secretary of State prior to the signing of this agreement. Such policies to be fair, objective and transparent, and formulated in accordance with the Academy Trust's legal powers and duties in relation to 16 to 19 provision.

2.21 In respect of any policies agreed in accordance with clause 2.20:

- a) The Secretary of State agrees that the Academy Trust may vary the policies subject to the Academy Trust informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable.
- b) The Academy Trust agrees to vary the policies as may become necessary to comply with changes to future legislation and/or as the Secretary of State may require.

## **Curriculum**

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

2.23. The Academy Trust must ensure that the curriculum provided is suitable to the requirements of the students and can include vocational, social, physical and recreational training.

2.24. 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 qualifications, or other future qualifications specified by the Secretary of State, offered by the Academy; and
  - d) how students and parents (including prospective students and parents) can obtain more information about the Academy's curriculum.
- 2.25. 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.
- 2.26. The Academy Trust must, where relevant, provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 2.27. 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.
- 2.28. The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.
- 2.29. The Academy Trust must provide for:
- a) the teaching of religious education for any student at the Academy wishing to receive it; and
  - b) ensure that at an appropriate time, on at least one day each week during which the Academy is open, an act of collective worship is held which students at the Academy may attend.
- 2.31. 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**

- 2.32. The Academy Trust must ensure that students at the Academy take part in assessments of student performance appropriate to the qualifications offered by the Academy.

- 2.33. 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.
- 2.34. The Academy Trust must ensure that it publishes information in relation to the Academy's performance on the Academy's website as the Secretary of State may request from time to time.
- 2.35. The Secretary of State may direct the Academy to participate in international education surveys. The Academy Trust must upon receipt of that direction, participate in that survey and provide to the Secretary of State or those carrying out the survey all such assistance and information as may reasonably be required for the purpose of the Academy's participation in that survey.

### 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 to cover 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) discretionary grants to students to meet the cost of student support, including support for students with learning difficulties or disabilities (taking into account that separate additional money will be available for students with learning difficulties 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 in accordance with the national funding formula for the education and training of 16-19 year olds, determined by the Secretary of State and taking account of the number of students at the Academy;



- b) payment of any additional specific grants made available to institutions within the further education sector, where the Academy meets the criteria for those grants, and at the Secretary of State's discretion; and
- c) 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 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 students 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 the Academy's age range in clause 2.11;
- 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 will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the number of students on roll at the Academy in the following September for the purposes of determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.

3.17. The arrangements for calculating the student number count for the purpose of determining GAG for the Academy shall be those provided for in guidance on

the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Financial Year, in respect of persons who have reached the age of 16 but have not reached the age of 19, or are aged 19-24 and have a learning difficulty and/or disability and are the subject of a learning difficulty assessment or Education Health Care Plan.

- 3.18. For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 3.16, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Individualised Learner Record or the school census for the Academy Financial Year in question as a means of determining student numbers. The additional or clawed-back grant will be only the amount relevant to the number of students above or below that estimate.
- 3.19. The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.11. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.
- 3.20. ***[This clause should be removed for academy converters. If removed, mark clause 3.20 'Not used']*** The Secretary of State may pay a further element of GAG to the Academy Trust during the Start-Up Period or during the period when year groups are present who have transferred from the Predecessor Institution, in order to allow the Academy to:
- a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials; and

- b) meet the costs associated with the recruitment and induction of additional staff.

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

- 3.21. The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, the intake of new students during the notice period may decline and therefore payments based on the number of students attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

### **Earmarked Annual Grant (EAG)**

- 3.22. 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.
- 3.23. 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**

- 3.24. 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.
- 3.25. 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**").
- 3.26. 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.

- 3.27. 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.
- 3.28. The Secretary of State will pay GAG in monthly instalments on or before the 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.
- 3.29. 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**

- 3.30. ***[This clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans – otherwise mark clause 3.30 as ‘Not used’]*** The Academy Trust may apply to the Secretary of State for financial assistance in relation to proposed redundancies at the Academy. In response to such an application, the Secretary of State may at

his discretion agree to meet a proportion of the Academy Trust's costs arising from the inclusion of academies in the schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State may agree to meet the costs of an employee's prior eligible service, being service before the Academy opened, but the Academy Trust must meet the costs of service after the Academy opened. The Secretary of State's financial assistance in this respect will only be available in the first two years after the Academy opens.

- 3.31. ***[Clause does not apply to free schools (unless there was a predecessor institution), or new provision academies – in these cases mark clause 3.31 as 'Not used']*** The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor Institution under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.
- 3.32. The Academy Trust may receive additional funding from an LA under an agreement with that LA for the provision of support for students 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 students.

#### 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. The Academy Trust shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State, as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any of its provision for persons who are above compulsory school age until the academic year in which they reach the age of 19.
- 4.5A [***This clause only applies to free schools – otherwise mark clause 4.5A as 'Not used'***]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. [***This clause to be included where relevant circumstances apply – and only in relation to academy converters – otherwise mark clause 4.11 as ‘Not used’***]For clarity, and in accordance with the intent of parity of funding with LA maintained schools, where the Predecessor Institution had a deficit balance and the DfE has settled this with the LA, that amount will be recovered from the Academy Trust over a period of up to 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 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. [***This clause to be included where a Start-Up period applies – otherwise mark clause 4.16 as ‘Not used’***]Any additional grant made in accordance with clause 3.20 for the Start-Up Period may be carried forward, without limitation or deduction, until the Start-Up Period ends.
- 4.17. Any additional grant made in accordance with clause 3.21, 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 3.21 cease to apply, or the Academy closes.



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

### **Annual accounts and audit**

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

4.20. 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.

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

4.22. 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.

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

4.24. 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.

4.25. 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**

4.26. 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**

4.27. 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.

4.28. 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**

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

- 4.30. The Academy Trust must give the Secretary of State 30 days notice of its intention to take any of the actions in clause 4.29(a) – (c) regardless of whether the Secretary of State’s consent is required..

#### **Retaining proceeds from the disposal of capital assets**

- 4.31. 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.
- 4.32. 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**

- 4.33. 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)

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

- 4.34. The Academy Trust must give the Secretary of State 30 days’ notice (or shorter period as the Secretary of State may agree) of its intention to do any

of the actions in clause 4.33 (a)-(c). regardless of whether the Secretary of State's consent is required.

- 4.35. 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**

- 4.36. 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**

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

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

***Choose the appropriate version of the land clauses from the options below, and delete the other versions.***

***Is the academy site being provided by the ESFA?***

***No:***

***Use version 1 if the academy's existing site is a freehold.***

***Use version 2 if the academy's existing site is held under a lease.***

***Use version 3 if the academy's existing site is held under a church supplemental agreement or lease from private site trustees.***

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

**Yes:**

**Is the new site being acquired freehold or leasehold?**

**Freehold:**

**Use version 4 if the Secretary of State is taking a legal charge over the new site.**

**Use version 5 if the Secretary of State is not taking a legal charge over the new site.**

**Leasehold:**

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

**Use version 7 if the Secretary of State is neither the landlord nor taking a legal charge over the new site.**

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

**[Version 1: existing freehold site]**

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

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

## **Restrictions on Land transfer**

5.1. The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the “Restriction”) to be entered in the proprietorship register for the Land:

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

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

## **Obligations of the Academy Trust**

5.2. The Academy Trust must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State’s consent.

5.3. 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.

### **Option**

5.4. 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 on termination of this Agreement. 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**

5.5. The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State’s consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to

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

### **Property notices**

- 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.

### **Sharing the Land**

- 5.7 Where:
- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
  - b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,

the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or leased to another Academy trust, as the Secretary of State considers appropriate, for the purpose of that Academy Trust establishing and maintaining an educational institution on the Land.

- 5.8 To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or leased in accordance with clause 5.7, the



Academy Trust must use its best endeavours to procure all necessary consents in order to enable it to share occupation of the Land with the incoming Academy Trust and to provide the incoming Academy Trust with security of tenure over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

5.9 For the purposes of clause 5.7:

- a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) a **parental need** will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
- c) **planned capacity** has the meaning given in clause 2.11.

***[Version 2: existing leasehold site]***

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

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

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

**Restrictions on Land transfer**

5.1. The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this

Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the “Restriction”) to be entered in the proprietorship register for the Land:

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

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

### **Obligations of the Academy Trust**

- 5.2. The Academy Trust must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State’s consent.
- 5.3. The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.
- 5.4. The Academy Trust must not, without the Secretary of State’s consent:
  - a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;

- b) grant any consent or licence; or
  - c) create or allow any encumbrance; or
  - d) part with or share possession or occupation; or
  - e) enter into any onerous or restrictive obligations,
- in respect of all or part of the Land.

### **Option**

5.5. The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire the Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. 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**

5.6. The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State’s consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to

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

### **Property notices**

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

### **Breach of Lease**

- 5.8. If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.
- 5.9. After notifying the Secretary of State under clause 5.8, the Academy Trust must:
- a) promptly give the Secretary of State all the information he asks for about the breach;
  - b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

## Sharing the Land

### 5.10 Where:

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
- b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,

the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or sublet to another Academy Trust, as the Secretary of State considers appropriate, for the purpose of that Academy Trust establishing and maintaining an educational institution on the Land.

5.11 To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 5.10, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Land with the incoming Academy Trust and to provide the incoming Academy Trust with security of tenure over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

5.12 For the purposes of clause 5.10:

- a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) a **parental need** will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and

- c) **planned capacity** has the meaning given in clause 2.11.

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

The parties' rights and obligations in respect of the Land are set out in the Church Supplemental Agreement or private lease dated [DATE] and made between (1) the Secretary of State; (2) the Academy Trust; (3) [SITE TRUSTEES OR BOARD]; and (4) any relevant religious authority. For the purposes of this clause, Land has the meaning given in the Church Supplemental Agreement or private lease.

***[Version 4: new freehold site provided by ESFA with a legal charge in favour of the Secretary of State]***

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

**"Discharge Process"** means the removal of:

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

**"Land"** means the land at [ADDRESS], being [part of] the land registered with title number [●], 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**

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 reach its planned capacity, as stated in clause 2.11, within [●] Academy Financial Years; or
- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 7.1; or
- c) the Secretary of State considers that not all the 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, 7.29 or 7.30 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 7.29(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 7.29, 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 7.30 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.

***[Version 5: new freehold site provided by ESFA with no legal charge]***

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

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

**Restrictions on Land transfer**

5.1. The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the “Restriction”) to be entered in the proprietorship register for the Land::

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

- b) take any further steps required to ensure that the Restriction is entered on the proprietorship register;



- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, allow the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

### **Obligations of the Academy Trust**

5.2. 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 the Land.

5.3. The Academy Trust must

- a) 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.
- b) keep the Land in good and substantial repair and condition and make good any damage or deterioration to the Land; and
- c) not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.

## Property notices

- 5.4. 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

- 5.5. 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 clause 5.7. 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

- 5.6. The Academy Trust:
- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;

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

#### **Land not used for the purposes of the academy**

5.7. If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that he intends to exercise the Option to transfer the Land or the relevant part of it for nil consideration to himself or his nominee.

#### **Sharing the Land**

- 5.8. If:
- a) the Academy does not reach its planned capacity, as stated in clause 2.11, within [●] Academy Financial Years; or
  - b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 7.1; or
  - c) the Secretary of State considers that not all the Land is needed for the operation of the Academy at planned capacity,

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.

***[Version 6: new leasehold site provided by ESFA with a legal charge in favour of the Secretary of State]***

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

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

- i. the Legal Charge registered with Companies House against the Academy Trust;
- ii. the Legal Charge from the charges register at the Land Registry against the title for the 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 5.12(a).

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

“**Land Value**” means, at any time:

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

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

**“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 (including the Landlord) which materially affects the Academy Trust’s ability to use the Land for the purposes of the Academy.

### **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 5.14(b) or 5.21(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 comply with the Lease and promptly enforce its rights against the Landlord.

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

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

in respect of all or part of the Land.

- 5.6. 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.
- 5.7. If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.
- 5.8. After notifying the Secretary of State under clause 5.7, the Academy Trust must:
- a) promptly give the Secretary of State all the information he asks for about the breach;
  - b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
  - c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.
- 5.9. If the Academy Trust has not entered into the Lease by [DATE], the Secretary of State may serve a Termination Notice.

### **Property notices**

- 5.10. 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

5.11. The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire the Land at nil consideration. The Secretary of State may exercise the Option in writing 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 5.14 or 5.21. 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

5.12. 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**

### 5.13. 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**

5.14. 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 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 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**

5.15. If:

- a) the Academy does not reach its planned capacity, as stated in clause 2.11, within [●] Academy Financial Years; or
- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 7.1; or
- c) the Secretary of State considers that not all the 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 the Land as required by the Secretary of State and account for the sale proceeds to the Secretary of State in payment of the Debt, after which the Secretary of State will carry out the Discharge Process over the Land.

### **Exercise of Rights**

5.16. On termination of this Agreement, the Secretary of State may give notice that he intends to exercise his rights under clauses 5.11, 7.29 or 7.30 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.

- 5.17. 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 7.29(b); and
  - c) the Secretary of State will carry out the Discharge Process;
- 5.18. 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.
- 5.19. If, on termination of this Agreement, the Secretary of State exercises his rights under clause 7.29, 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.
- 5.20. If, on termination of this Agreement, the Secretary of State agrees under clause 7.30 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.

5.21. 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.

5.22. If the Secretary of State consents to the sale of the Land, subject to any of the conditions in clause 5.21(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.

5.23. 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.

### **Payment of Debt**

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

5.25. If the Academy Trust:

- a) sells some or all of the Land in accordance with clause 5.21, or
- b) pays the Debt to the Secretary of State,

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

### ***[Version 7: new leasehold site provided by ESFA without a legal charge where the Secretary of State is not the landlord]***

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

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

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

### **Restrictions on Land transfer**

5.1. The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the

following restriction (the “Restriction”) to be entered in the proprietorship register for the Land::

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

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

### **Obligations of the Academy Trust**

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

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

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

in respect of all or part of the Land.

- 5.4. 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.
- 5.5. If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.
- 5.6. After notifying the Secretary of State under clause 5.5, the Academy Trust must:
- a) promptly give the Secretary of State all the information he asks for about the breach;
  - b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
  - c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.
- 5.7. If the Academy Trust has not entered into the Lease by [DATE], the Secretary of State may serve a Termination Notice.

### **Property notices**

- 5.8. 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

5.9. The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire the Land at nil consideration. The Secretary of State may exercise the Option in writing 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 clause 5.11. 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

5.10. 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.

## **Land not used for the purposes of the academy**

5.11. If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that he intends to exercise the Option to transfer the Land for nil consideration to himself or his nominee.

## **Sharing the Land**

5.12 If:

- a) the Academy does not reach its planned capacity, as stated in clause 2.11, within [●] Academy Financial Years; or
- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 7.1; or
- c) the Secretary of State considers that not all the Land is needed for the operation of the Academy at planned capacity,

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.

***[Version 8: new leasehold site provided by ESFA where the Secretary of State is the landlord]***

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

“**Lease**” means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and the Secretary of State [for Communities and Local Government] ***[Omit words in square brackets if lease granted by the Secretary of State for Education]*** (the “**Landlord**”) under which the Academy Trust derives title to the Land.

“**Property Notice**” means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord unless the Landlord is the

Secretary of State for Education) which materially affects the Academy Trust's ability to use the Land for the purposes of the Academy.

### **Restrictions on Land transfer**

**[This clause applies only if the lease is registrable at the Land Registry – otherwise mark clause 5.1 as 'Not used'.]**

5.1 The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is demised to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the demise of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the "**Restriction**") to be entered in the proprietorship register for the Land:

*No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;*

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

### **Obligations of the Academy Trust**

5.2 The Academy Trust must comply with the Lease.

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 including charging the land; or
- c) part with or share possession or occupation; or
- d) enter into any onerous or restrictive obligations

in respect of all or part of the Land Provided that that the Academy Trust may grant a licence or share occupation of part of the Land with a proprietor or proposed proprietor of an Academy or a body or individual providing services or facilities which are within the uses permitted by the Lease and where no relationship of landlord and tenant arises as a result of such occupation.

5.3 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.

5.4 If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

5.5 After notifying the Secretary of State under clause 5.4 the Academy Trust must:

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

5.6 If the Academy Trust has not entered into the Lease by [DATE] the Secretary of State may serve a Termination Notice.

## Property Notices

5.7 If the Academy Trust receives a Property Notice , it must:

- a) send a copy of it (where not issued by the Landlord) to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
- b) promptly give the Secretary of State all the information he asks for about it;
- c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

## Sharing the Land

***[This clause applies only if the lease is in the long form – if the lease takes the short form, mark clause 5.8 as ‘Not used’.]***

5.8 If:

- a) the Academy does not reach its planned capacity, as stated in clause 2.11, within [●] Academy Financial Years from and including the first year of opening; or
- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 7.1 or
- c) the Secretary of State considers, having consulted with the Academy, that not all the Land is needed for the operation of the Academy at planned capacity,

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 subject to the terms of the Lease Provided that any associated reasonable

costs directly arising from the legal arrangements will be payable by the Secretary of State.

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

## **6. COMPLAINTS**

***[Clauses 6.1 – 6.4 do not apply to free schools and new provision academies – in these cases mark clauses as ‘Not used’]***

- 6.1. 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 had remained a maintained school, the Academy Trust:
- a) must abide by the provisions of Part III as if the Academy were a maintained school;
  - 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.***[If this clause does not apply, mark clause 6.1 as ‘Not used’]***
- 6.2. If the Secretary of State could have given an order or a direction under sections 496 or 497 of the Education Act 1996 to the governing body of the Predecessor School relating 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.**[If this clause does not apply, mark clause 6.2 as 'Not used']**

6.3. If a complaint made to the governing body of the Predecessor School has not been fully investigated when the Academy opens, the Academy Trust must continue to investigate that complaint in accordance with the complaints procedures established by that governing body.**[If this clause does not apply, mark clause 6.3 as 'Not used']**

6.4. If a complaint is made to the Academy Trust about matters arising wholly or partly during the 12 months before the Academy opened, the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the Academy opened.**[If this clause does not apply, mark clause 6.4 as '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 students 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 students 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 has made a report under section 124(4)(a) or 125(4)(a) of the Education and Inspections Act 2006 and stated that he does not consider the education or training inspected in the Academy to be of a quality adequate to meet the reasonable needs of those receiving it, the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

7.6A [***This clause applies to a boarding academy/boarding free school only, otherwise mark clause 7.6A 'Not used'***]If, following an inspection, the Chief Inspector makes a notification to the Secretary of State in respect of the



Academy under section 87(4) of the Children Act 1989, or the Chief Inspector is otherwise of the opinion that the Academy Trust has not met the National Minimum Standards or the Independent School Standards in respect of the Academy, the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

- 7.7. If the Secretary of State has served a Termination Warning Notice under clause 7.6 [\*or clause 7.6A ][\*insert if clause 7.6A used] and:
- a) has not received any representations from the Academy Trust by the date specified in the notice; or
  - b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated,

he may serve a Termination Notice.

- 7.8. [***This clause applies to sponsored academies only – otherwise mark clause 7.8 as ‘Not used’***]If the Chief Inspector gives a notice referred to in clause 7.6 [\*or clause 7.6A ][\*insert if clause 7.6A used] to the Academy Trust within two years after the Academy opened, the Secretary of State may only serve a Termination Warning Notice under clause 7.6 [\*or clause 7.6A] [\*insert if clause 7.6A used] if:

- a) the Chief Inspector has held a monitoring inspection under section 124(1) of the Education and Inspections Act 2006 later than two years after the Academy opened; and
- b) the Chief Inspector considers that the Academy is not making enough progress towards the removal of the designation referred to in his notice.

Nothing in this clause prevents or prejudices the Secretary of State exercising any other rights arising from or under this Agreement (including, for the avoidance of doubt, any rights under clauses 7.2 to 7.5).

### **Termination by the Secretary of State**

7.9. 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.

7.10. 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.

7.11. 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.

7.12. For the purposes of clause 7.11 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.

7.13. For the purposes of clause 7.12:

- 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.

7.14. ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 7.14 as ‘Not used’]*** If at any time before the Academy opens, the total number of prospective students who have accepted offers of places to attend the Academy in [month and year] is less than [NUMBER], the Secretary of State may:

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

7.15. ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 7.15 as ‘Not used’]*** If at any time after the Academy has opened, the Secretary of State considers that the Academy is not financially viable because of low pupil numbers, then he may:

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

7.16. [***This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 7.16 as ‘Not used’***]If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.

7.17. [***This clause applies to free schools , and may be applied to new provision academies in some cases – otherwise mark clause 7.17 as ‘Not used’***]If full planning permission (including where relevant listed building consent) in respect of the Land has not been obtained by [DATE], the Secretary of State may serve a Termination Notice.

7.18. [***This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 7.18 as ‘Not used’***]If at any time before the Academy opening date, the Secretary of State considers that:

- a) the Academy would, on opening, provide an unacceptably low standard of education; or
- b) the safety of students 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,

he may either:

- A. require the Academy Trust:
  - i. not to open the Academy; or
  - ii. not to admit students 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**

7.19. The Secretary of State may at any time, subject to clause 7.20, 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.

7.20. 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.

7.21. 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.

7.22. When notifying the Secretary of State under clause 7.21, 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 7.19.

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

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

7.24. 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 students to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

## **Effect of Termination**

- 7.25. If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 7.26. Subject to clauses 7.27 and 7.28, 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.
- 7.27. 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.
- 7.28. 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 7.26, 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.
- 7.29. 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 7.29(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.

7.30. The Secretary of State may:

- a) waive all or part of the repayment due under sub-clause 7.29(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.
- 8.3. The Academy Trust agrees to comply with the “Specification of the Individualised Learner Record” or the “school census” published by the Skills Funding Agency.

### **Access by the Secretary of State's Officers**

- 8.4. 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.



- 8.5. 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 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.
- 8.6. 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**

- 8.7. 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 or [INSERT]	[INSERT]

### General provisions

- 8.8. The Academy Trust cannot assign this Agreement.
- 8.9. 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.
- 8.10. Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.
- 8.11. 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.
- 8.12. 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**

## **ANNEXES**

### **9. 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.

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

### **10. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS**

(Clauses 10.1-10.7 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

- 10.1. The Academy Trust must admit all children with a Statement of SEN naming the Academy.
- 10.2. The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.
- 10.3. 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.
- 10.4. 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.
- 10.5. 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.
- 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



Department  
for Education

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