

**DEED OF NOVATION AND VARIATION
OF THE
SUPPLEMENTAL FUNDING AGREEMENT FOR DARFIELD PRIMARY ACADEMY**

The Parties to this Deed are:

(1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

(2) **OUTWOOD GRANGE ACADEMIES TRUST**, a charitable company incorporated in England and Wales with registered company number 06995649 whose registered address is at Potovens Lane, Outwood, Wakefield WF1 2PF ("**OGAT**"); and

(3) **NAVIGATE ACADEMIES TRUST**, a charitable company incorporated in England and Wales with registered company number 08021882 whose registered address is at Brookfield Court Selby Road, Garforth, Leeds LS25 1NB (the "**Company**"),

together referred to as the "Parties".

INTRODUCTION

- A. Darfield Primary Academy is an academy within the meaning of the Academies Act 2010 (the "**academy**") and is currently operated by the Company (a multi academy trust).
- B. The Secretary of State and the Company entered into a Supplemental Funding Agreement on 30 August 2013 (the "**Agreement**") for the maintenance and funding of the academy (attached as Schedule 1).
- C. It is proposed that, with effect from 00.01 am on 1 April 2016 ("Transfer Date"), OGAT will assume responsibility for the management and operation of the academy in succession to the Company.
- D. The Parties wish to novate the Agreement to OGAT and the Secretary of State and OGAT wish to vary the terms of the Agreement subject to the provisions of this Deed.

LEGAL AGREEMENT

1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Agreement, bear the meaning given to it in the Agreement.

NOVATION

2. The Company transfers all its rights and obligations under the Agreement to OGAT with effect on and from the Transfer Date. With effect on and from the Transfer Date, OGAT shall enjoy all the rights and benefits of the Company under the Agreement and all references to the Company in the Agreement shall be read and construed as references to OGAT.
3. The references in the Agreement to the Master Funding Agreement between the Company and the Secretary of State shall be read as a reference to the Master Funding Agreement between the OGAT and the Secretary of State.
4. With effect on and from the Transfer Date, OGAT agrees to perform the Agreement and be bound by its terms in every way as if it were the original party to it in place of the Company.
5. With effect on and from the Transfer Date, the Secretary of State agrees to perform the Agreement and be bound by its terms in every way as if OGAT were the original party to it in place of the Company.

OBLIGATIONS AND LIABILITIES

6. With effect on and from the Transfer Date, the Company and the Secretary of State release each other from all future obligations to the other under the Agreement.
7. Each of the Company and the Secretary of State release and discharge the other from all claims and demands under or in connection with the Agreement arising on and after the Transfer Date.
8. Each of OGAT and the Secretary of State will have the right to enforce the Agreement and pursue any claims and demands under the Agreement against the other with respect to matters arising before, on or after the date of this Deed as though OGAT were the original party to the Agreement instead of the Company.

INDEMNITY

9. OGAT agrees to indemnify the Company against any losses, liabilities, claims, damages or costs the Company suffers or incurs under or in connection with the

Agreement as a result of OGAT's failure to perform or satisfy its obligations under the Agreement on or after the Transfer Date.

VARIATION

10. The Secretary of State and OGAT agree that with effect on and from the Transfer Date the Agreement shall be amended and restated so as to take effect in the form set out in Schedule 2 to this Deed.
11. As varied by this Deed, the Agreement shall remain in full force and effect.
12. This Deed shall be governed by and interpreted in accordance with English law.
13. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

COUNTERPARTS

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

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

EXECUTED as a deed by affixing the corporate seal)
of **THE SECRETARY OF STATE FOR EDUCATION**)
authenticated by:-)

.....
Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**
Date.....

EXECUTED as a deed by **OGAT**
acting by one director in the
presence of a witness:

Director

Print name

Date

Witness

Print name

Address

Occupation

EXECUTED as a deed by **the**
Company acting by one
director in the presence of a
witness:

Director

Print name

Date

Witness

Print name

Address

Occupation

Schedule 1
Supplemental Funding Agreement

FREEDOM OF INFORMATION REDACTION SHEET

Darfield Primary Academy

Supplemental Funding Agreement

Exemptions in full

n/a

Partial exemptions

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

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

Factors for disclosure

- further to the understanding of and increase participation in the public debate of issues concerning Academies.
- to ensure transparency in the accountability of public funds

Factors for Withholding

- To comply with obligations under the Data Protection Act

Reasons why public interest favours withholding information

Whilst releasing the majority of the **Darfield Primary Academy Supplemental Funding Agreement** will further the public understanding of Academies. The whole of the **Darfield Primary Academy Supplemental Funding Agreement** cannot be revealed. If the personal information redacted was to be revealed under the FOI Act, Personal Data and Commercial interests would be prejudiced.

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SUPPLEMENTAL FUNDING AGREEMENT

THIS AGREEMENT made 30 August 2013

BETWEEN

(1) THE SECRETARY OF STATE FOR EDUCATION; and

(2) NAVIGATE ACADEMIES TRUST of Carrwood Park, Selby Road, Leeds LS15 4LG

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 23 August 2012 as amended (the "Master Agreement").

1. DEFINITIONS AND INTERPRETATION

1.1 Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.

1.2 The following words and expressions shall have the following meanings:

"the Academy" means the Darfield Primary Academy to be established at Darfield, Barnsley S73 9LT;

"Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;

"Further Remedial Measures" has the meaning given in clause 5.4;

"Insolvency" has the meaning given to it in section 123 of the Insolvency Act 1986;

"the Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Darfield Valley Primary School, Darfield, Barnsley S73 9LT and registered under Title number SYK518622;

"LA" means Barnsley Metropolitan Borough Council;

"Lease" means the lease granted by the LA to the Company in relation to the Academy;

"Normal Payment Matters" has the meaning given to it in the Principal Agreement;

"PFI Contractor" means Modern Schools (Barnsley) Limited (CN 05259225);

"Principal Agreement" means the principal agreement entered into by the Secretary of State, the Company and the LA in connection with the Academy and dated on or around the date of this Agreement;

"Project Agreement" means the PFI project agreement dated 4 May 2005 and entered into by the LA and PFI Contractor (as may be amended from time to time);

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"School Agreement" means the school agreement entered into by the LA and the Company relating to the provision of facilities and services to the Academy and dated on or around the date of this Agreement;

"Specified Remedial Measures" has the meaning given in clause 5.3; and

"Termination Warning Notice" has the meaning given in clause 5.2.

1.3 Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

2. THE ACADEMY

2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement, this Agreement, the Principal Agreement, the School Agreement and the Lease.

2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.

2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1.

ACADEMY OPENING DATE

2.4 The Academy shall open as a school on 1 September 2013 replacing Darfield Valley Primary School which shall cease to be maintained by the LA on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

2.5 The planned capacity of the Academy is 210 in the age range 3-11, and a nursery unit of 26 (full time equivalent) places.

3. CAPITAL GRANT

3.1 Pursuant to clause 38 of the Master Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

4. GAG AND EAG

4.1 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.

4.2 The Company shall use the GAG funding it receives prudently in order to cover the normal reasonable running costs of the Academy including, but not limited to, payments which fall due pursuant to the School Agreement and/or the Principal Agreement.

4.3 In the event that the Secretary of State pays the LA any sums pursuant to the Principal Agreement the Secretary of State may, subject to clause 4.4, set off or abate an amount equal to such sums from any GAG payable to the Company in respect of the Academy pursuant to this Agreement in the following financial year.

4.4 Before exercising its right of set off or abatement pursuant to clause 4.3 above, the Secretary of State shall:

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- 4.4.1 notify the Company that such sums have been paid by the Secretary of State to the LA;
- 4.4.2 take into account (acting reasonably) any representations made by the Company providing reasons why the relevant liabilities were not settled;
- 4.4.3 take into account (acting reasonably) any representations made by the Company as to the nature of the liabilities under consideration.

4A **COMPLAINTS**

4A. NOT USED.

5. **TERMINATION**

- 5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2020 or any subsequent anniversary of that date.

Termination Warning Notice

- 5.2 The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("**Termination Warning Notice**") where he considers that:
- (a) **the Academy** is no longer meeting the requirements referred to in clause 12 of the Master Agreement (subject to clause 5.9 of this Agreement);
 - (b) the conditions and requirements set out in clauses 13-34B of the Master Agreement are no longer being met;
 - (c) the standards of performance of pupils at **the Academy** are unacceptably low;
 - (d) there has been a serious breakdown in the way **the Academy** is managed or governed;
 - (e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise);
 - (f) the Company is in material breach of the provisions of this Agreement or the Master Agreement;
 - (g) the Secretary of State is under a liability to make a payment to the LA pursuant to the **Principal Agreement** and/or the LA has recovered any sums from the Secretary of State pursuant to the **Principal Agreement**;
 - (h) the Secretary of State considers that in the immediately preceding 12 month period, the aggregate of payments made by the Company to the LA pursuant to the **Principal Agreement** in respect of **Normal Payment Matters** has reached a level which the Secretary of State considers to be excessive and which may (assessed objectively) cause the Company material financial difficulties;
 - (i) the Secretary of State considers (acting reasonably) that there has been a **Persistent Breach** of the **School Agreement** and/or the **Principal Agreement** likely to materially and adversely impact on the provision of educational services

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at the Academy, and for the purposes of this clause 5.2(i) "Persistent Breach" means: (i) a particular breach (including, but not limited to, a breach which relates to contract management and co-operation) which has recurred three (3) or more times in any rolling six (6) month period; or (ii) the occurrence of five (5) or more different breaches (including, but not limited to, breaches which relate to contract management and co-operation) in any rolling six (6) month period;

- (j) the Company has committed a material breach of the **School Agreement** and/or the **Principal Agreement**;
- (k) the Secretary of State has received a notice from the LA sent pursuant to the **Principal Agreement** informing it of instances of breaches or non-compliance by the Company of its obligations under the **School Agreement** and/or **Principal Agreement** that may have the consequence of causing the LA to be in breach or default of the Project Agreement;
- (l) the Company has acted or omitted to act such that any **Specified Remedial Measures** and/or **Further Remedial Measures** as may have been specified by the Secretary of State have been or may be undermined or circumvented; or
- (m) the circumstances envisaged by clauses 5.25 and 5.26 of this Agreement in respect of EAG funding are applicable.

Each of a) to m) (inclusive) above is a default event for the purposes of this Agreement.

5.3 A **Termination Warning Notice** issued by the Secretary of State in accordance with clause 5.2 shall specify:

- (a) reasons for the Secretary of State's issue of the **Termination Warning Notice**;
- (b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified ("**Specified Remedial Measures**"); and
- (c) the date by which the Company must respond to the **Termination Warning Notice** providing its representations with regard thereto or confirm that it accepts and agrees to undertake the **Specified Remedial Measures**.

5.4 The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.3(c) and shall confirm whether he considers that:

- (a) in the light of the Company's representations in response to the **Termination Warning Notice**, some or all of the **Specified Remedial Measures** are not required to be implemented (and if so which) and/or the **Specified Remedial Measures** are being or will be implemented within the specified timeframe; or
- (b) subject to any further measures he reasonably requires ("**Further Remedial Measures**") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
- (c) he is not satisfied that the Company will rectify the defaults identified in the **Termination Warning Notice** within the specified timeframes. (In such

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circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date).

5.5 The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date in the event that:

(a) the Company has not, by the date specified in clause 5.3(c), responded to the **Termination Warning Notice** either confirming that it accepts and agrees to undertake the **Specified Remedial Measures** or providing its representations with regard to the **Specified Remedial Measures**; or

(b) the Company has not carried out the **Specified Remedial Measures** and/or **Further Remedial Measures** within the specified timeframes;

provided that having considered any representations made by the Academy Trust pursuant to clause 5.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

Notice of Intention to Terminate

5.6 The Secretary of State may at any time give written notice of his intention to terminate this Agreement where the **Chief Inspector** gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the **Chief Inspector's** opinion:

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

(b) **the Academy** requires significant improvement.

5.7 Any notice issued by the Secretary of State in accordance with clause 5.6 shall invite the Company to respond with any representations within a specified timeframe.

5.8 Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.6 and 5.7 and:

(a) he has not received any representations from the Company within the timeframe specified in clause 5.7; or

(b) having considered the representations made by the Company pursuant to clause 5.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement with effect from a specified date.

Termination with Immediate Effect

5.9 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that **the Academy** shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

Notice of Intention to Terminate by Company

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- 5.10 The provisions of this clause 5.10 and of clauses 5.11 to 5.15 (inclusive) shall apply when the **Project Agreement** has expired or been terminated (for so long as the **Project Agreement** is extant the provisions of clauses 5.16 to 5.27 below shall apply in place of clauses 5.10 to 5.15). The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "Indicative Funding"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "Critical Year") and of the taking into account all other resources available and likely to be available to the **Academy**, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the **Academy** from other academies operated by the Company ("All Other Resources"), it is likely that the cost of running the **Academy** during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 5.11 Any notice given by the Company under clause 5.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 5.11.1 the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the **Academy** are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and
 - 5.11.2 the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the **Academy** and the projected expenditure on the **Academy**; and
 - 5.11.3 a detailed budget of income and expenditure for the **Academy** during the Critical Year (the "Projected Budget").
- 5.12 Both parties undertake to use their best endeavours to agree whether or not the cost of running the **Academy** during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the **Academy** and undertake to use their best endeavours to agree a practical solution to the problem.
- 5.13 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the **Academy** during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "Expert") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "Shortfall"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be

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appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.

- 5.14 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 5.15 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.
- 5.16 The provisions of this clause 5.16 and of clauses 5.17 to 5.27 (inclusive) shall apply when the Project Agreement is subsisting (when the Project Agreement has expired or been terminated the provisions of clauses 5.10 to 5.15 above shall apply in place of clauses 5.16 to 5.27). The Secretary of State will, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "Indicative Funding").
- 5.17 For the purpose of clauses 5.17 to 5.27:
- "Critical Years" means the then current financial year and, if an annual letter of funding or its equivalent has been received for the following financial year, that following financial year;
- "Current Funding" means the funding specified in the annual letters of funding (or their equivalent) for the Critical Years and all other resources available and likely to be available to the Company, including such funds as are set out in the Master Agreement;
- A "PFI EAG Refusal" occurs where:
- (a) the Company has made a request for EAG funding to cover any costs that the Company has incurred or reasonably considers is likely to incur as a result of meeting its obligations and/or discharging its liabilities under the School Agreement or the Principal Agreement; and
 - (b) the Secretary of State has not agreed, in accordance with clauses 55 and 56 of the Master Agreement, to provide such EAG funding to the Company.
- 5.18 Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Company may provide written notice that it considers that, after taking into account its Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency ("Company Insolvency Notice");
- 5.19 Any Company Insolvency Notice must specify:

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- 5.19.1 the grounds and evidence, including any professional accounting advice, upon which the Company's opinion is based;
 - 5.19.2 a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs are less than its Current Funding and the period of time within which such steps will be taken;
 - 5.19.3 the shortfall in the Critical Years between the Current Funding expected to be available to the Company to cover the running costs and the projected expenditure of the Company; and
 - 5.19.4 a detailed budget of income and expenditure for the Academy during the Critical Years.
- 5.20 Within 15 days of the provision of the Company Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into **Insolvency** and such **Insolvency** could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable running costs of the Academy). Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their reasonable endeavours to agree a practical solution to the problem.
- 5.21 If the parties are unable to reach an agreement in accordance with clause 5.20 within 15 days of the Company Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "Expert") for determination:
- 5.21.1 whether, on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into **Insolvency**;
 - 5.21.2 whether the Company is using the funds provided under this Agreement and the Master Agreement prudently; and
 - 5.21.3 whether the Company is using the funds provided under this Agreement and the Master Agreement in accordance with the requirements of this Agreement and the Master Agreement.

The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination:

- (a) the amount of the shortfall (if any) in funding between the running costs and the Current Funding during the Critical Years (the "Shortfall"); and
- (b) (if appropriate) recommendations as to future spending and the running costs.

The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales.

- 5.22 The parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in determining the matters referred to

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him. The Expert shall be required in performing his role to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust.

- 5.23 The Expert's and the educational specialist's fees shall be borne equally between the parties.
- 5.24 For the purpose of clauses 5.25 and 5.27, "Insolvency Decision" means either:
- 5.24.1 in accordance with clause 5.20, the Secretary of State agrees with the Company that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Company to go into **Insolvency** which could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable running costs of the Academy); or
- 5.24.2 an Expert determines in accordance with clause 5.21 that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Company to go into **Insolvency** or that the Company is not using the funds provided under this Agreement and the Master Agreement prudently and in accordance with the requirements of this Agreement and the Master Agreement.
- 5.25 Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:
- 5.25.1 withdraw the PFI EAG Refusal and promptly pay to the Company the amount of requested EAG funding or such other sum as shall be appropriate; or
- 5.25.2 terminate this Agreement on not less than 20 Business Days notice to the Company.
- 5.26 In the event that the Secretary of State provides additional EAG funding in accordance with clause 5.25, the Secretary of State may within 12 months of paying the additional EAG funding, terminate this Agreement at any time.
- 5.27 In the event that there is no Insolvency Decision, this Agreement shall continue and the Secretary of State shall not be obliged to pay to the Company the requested EAG funding.

6. EFFECT OF TERMINATION

- 6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.
- 6.2 Subject to clauses 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

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- 6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:
- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or at a later date; or
 - (b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.
- 6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:
- (a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or
 - (b) the Secretary of State directs all or part of the repayment to be paid to the LA.
- 6.7 The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.

LAND

Restrictions on Land transfer

- 6A Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:
- (a) shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of

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the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:

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) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register;
- (c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry;
- (d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002);
- (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 6A(a) or 6A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

7. **ANNEX**

7.1 The Annex to this Agreement forms part of and is incorporated into this Agreement.

8. **THE MASTER AGREEMENT**

8.1 Except as expressly provided in this Agreement the Master Agreement shall continue in full force and effect.

8.2 NOT USED.

9. **GENERAL**

9.1 This Agreement shall not be assignable by the Company.

9.2 No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

9.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

Multi Academy Model
Mainstream

- 9.4 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 9.5 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 9.6 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement was executed as a Deed on

2013

Executed on behalf of NAVIGATE ACADEMIES TRUST by:

Either



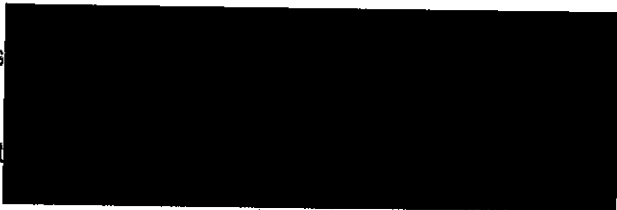
Director

In the presence of:

Witness



Address



Occupation

Or

.....
Director

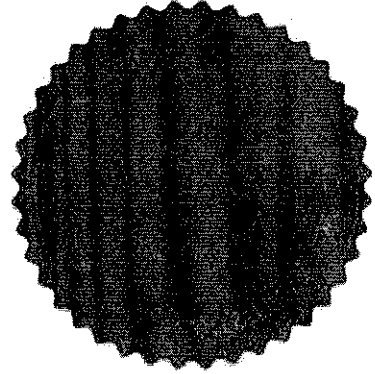
.....
Director/Secretary

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Mainstream

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



Duly Authorised



ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the Darfield Primary Academy

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except as provided in paragraphs 2A to 2B below the Company will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code, and the School Admission Appeals Code published by the Department for Education ("the Codes") as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to "admission authorities" shall be deemed to be references to the Directors of the Company.
 - 2A The Company is permitted to determine admission arrangements (subject to consultation in accordance with the School Admissions Code) that give priority for admission (but not above looked after children and previously looked after children¹) to other children attracting the pupil premium, including the service premium (the pupil "premium admission criterion"). Where a Company exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.
 - 2B For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
 - (a) any personal details about their financial status; or
 - (b) whether parents are serving in the armed forces (of any nation), stationed in England, and exercising parental care and responsibility for the child in question.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will participate in the co-ordinated admission arrangements operated by the LA and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
 - (a) direct the Company to admit a named pupil to the Darfield Primary Academy on application from an LA. This will include complying with a School Attendance Order. Before doing so the Secretary of State will consult the Company;
 - (b) direct the Company to admit a named pupil to the Darfield Primary Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes;
 - (c) direct the Company to amend its admission arrangements where they fail to comply with the School Admissions Code or the School Admission Appeals Code.

¹ As defined in the School Admissions Code.

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Mainstream

5. The Company shall ensure that parents and "relevant children"² will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Company. The Independent Appeal Panel will be independent of the Company. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

Relevant Area

6. Subject to paragraph 7, the meaning of "Relevant Area" for the purposes of consultation requirements in relation to admission arrangements is that determined by the LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
7. If the Company does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Company and the LA in which the Academy is situated in reaching a decision.

Requirement to admit pupils

8. Pupils on roll in any predecessor maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at any predecessor school will be admitted.
9. The Company will:
- (a) subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
 - (b) determine admission oversubscription criteria for the Academy that give highest priority to looked after children and previously looked after children, in accordance with the relevant provisions of the School Admissions Code.

Oversubscription criteria, admission number, consultation, determination and objections.

10. The Academy's admission arrangements will include oversubscription criteria, and an admission number for each relevant age group. The Company will consult on the Academy's admission arrangements and determine them in line with the requirements within the School Admissions Code.
11. The Office of the Schools' Adjudicator (OSA) will consider objections to the Academy's admission arrangements. The Company should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA.

² "relevant children" means:

- a) in the case of appeals for entry to a sixth form, the child; and
- b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.

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Mainstream

12. A determination of an objection by the OSA will be binding upon the Academy and the Company will make appropriate changes as quickly as possible

Schedule 2
Amended Supplemental Funding Agreement



Department
for Education

Mainstream academy and free school: supplemental funding agreement

September 2015

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SUMMARY SHEET

Information about the Academy:

| | |
|--|---|
| Name of Academy Trust | Outwood Grange Academies Trust |
| Company number | 06995649 |
| Date of Master Funding Agreement | 23 December 2014 |
| Name of academy | Outwood Academy Darfield |
| Opening date | 1 September 2013 |
| Type of academy (indicate whether academy or free school) | Mainstream academy |
| Religious designation | None |
| Wholly or partly selective | N/A |
| Name of predecessor school (where applicable) | Darfield Valley Primary School |
| Capacity number | 210 |
| Age range | 3 – 11 |
| Number of sixth form places | 0 |
| Number of boarding places | 0 |
| SEN unit / Resource provision | 0 |
| Land arrangements (Version 1-7 or other) | Version 2 |
| Address and title number of Land | Snape Hill Road, Darfield, Barnsley S73 9LT registered under title numbers SYK518622 and SYK610710. |

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

| Clause No. | Descriptor | Applied | Not used |
|------------|---|---------|----------|
| 1.I | Only applies to free schools and new provision academies | | ✓ |
| 1.J | Only applies to academies which form part of a PFI arrangement | | ✓ |
| 1.K | Only applies to academies which form part of a PFI arrangement | | ✓ |
| 2.A.1 | Clause applies where an academy was previously a VC or foundation school designated with a religious character | | ✓ |
| 2.C, 2.D | Only applies where the academy has an SEN unit | | ✓ |
| 2.E | Only applies where there was a predecessor independent school | | ✓ |
| 2.G | Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies | | ✓ |
| 2.M | Clause applies only to academies and free schools designated with a religious character | | ✓ |
| 2.N | Clause applies only to academies that were formerly wholly selective grammar schools | | ✓ |
| 2.O | Clause applies only to academies that were formerly partially selective grammar schools | | ✓ |
| 2.T | Clause applies to free schools and new provision academies designated with a religious character | | ✓ |
| 2.W | Clause only applies where the academy is designated with a religious character | | ✓ |
| 2.X | Clause only applies where the academy has not been designated with a religious character | ✓ | |
| 2.Y | Clause applies where an academy was previously a VC school or foundation school | | ✓ |

| Clause No. | Descriptor | Applied | Not used |
|-------------|---|---------|----------|
| | designated with a religious character | | |
| 2.Yc) | Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian' | | ✓ |
| 3.A – 3.F | Option 1 applies to converter and sponsored academies: if used delete option 2 | | ✓ |
| 3.A – 3.F | Option 2 applies to free schools and new provision academies: if used delete option 1 | ✓ | |
| 3.H | Clause relating to Start-up only applies in some cases (does not apply to academy converters) | | ✓ |
| 3.J | Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans | | ✓ |
| 3.K | Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies | | ✓ |
| 3.L | Only applies to academies which form part of a PFI arrangement | | ✓ |
| 3.M | Only applies to academies which form part of a PFI arrangement | | ✓ |
| 3.N | Only applies to academies which form part of a PFI arrangement | | ✓ |
| 5B(d) - (k) | Only applies to academies which form part of a PFI arrangement | | ✓ |
| 5.G.1 | Clause applies only to a boarding academy/free school. | | ✓ |
| 5.I | Clause only applies to sponsored academies | | ✓ |
| 5.K | Clause applies to free schools and may be applied to new provision academies | | ✓ |
| 5.L | Clause applies to free schools and may be applied to new provision academies | | ✓ |

| Clause No. | Descriptor | Applied | Not used |
|------------|--|---------|----------|
| 5.M | Clause applies to free schools and may be applied to new provision academies | | ✓ |
| 5.N | Clause applies to free schools and may be applied to new provision academies | | ✓ |
| 5.O | Clause applies to free schools and may be applied to new provision academies | | ✓ |
| 5Z - 5LL | Only applies to academies which form part of a PFI arrangement | | ✓ |
| 6.H | Clause only applies to schools which are designated with a Church of England or Roman Catholic character | | ✓ |

Please identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a mixture of those designated with a religious character, and those which are not):

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

| Descriptor | Clause No. | Applied | Not used |
|----------------------|------------|---------|----------|
| Part of a PFI Scheme | | ✓ | |
| | | | |
| | | | |

1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and Outwood Grange Academies Trust is supplemental to the master funding agreement made between the same parties and dated 23 December 2014 (the "**Master Agreement**").

Definitions and interpretation

1.B Except as expressly provided in this Agreement words and expressions defined in the Master Agreement will have those same meanings in this Agreement.

1.C The following capitalised words and expressions will have the following meanings:

"The **Academy**" means the Outwood Academy Darfield Academy.

"**Academy Trust Insolvency Notice**" - clause 5.CC;

"**Coasting**" has the meaning given in regulations made under section 60B of the Education and Inspections Act 2006.

"**Critical Years**" - clause 5.BB;

"**Current Funding**" - clause 5.BB;

"**Insolvency**" has the meaning given to it in section 123 of the Insolvency Act 1986;

"**Lease**" has the meaning given to it in clause 4 of this Agreement;

"**Normal Payment Matters**" has the meaning given to it in the Principal Agreement;

"**PFI Contractor**" means Modern Schools (Barnsley) Limited (company registration number 5259225), the counterparty of the LA to the Project Agreement, or any other successor contractor appointed in accordance with the Project Agreement;

"**PFI EAG Refusal**" - clause 5.BB;

"**Principal Agreement**" means the principal agreement entered into by the

Secretary of State, the Academy Trust and the LA in connection with the Academy and dated on or around the date of this Agreement;

"Project Agreement" means the PFI project agreement dated 4 May 2005 and entered into by the LA and PFI Contractor (as may be amended from time to time); and

"School Agreement" means the school agreement entered into by the LA and the Academy Trust relating to the provision of facilities and services to the Academy and dated on or around the date of this Agreement

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

"Shortfall" - clause 5.FF

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

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

- 1.D The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.
- 1.E Reference in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes to this Agreement.

The Academy

- 1.F The Academy is a Mainstream Academy as defined in clause 12 of the Master Agreement.
- 1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.
- 1.H The Academy opened as an Academy on 1 September 2013.

- 1.I Not used.
- 1.J The Academy Trust shall enter into the School Agreement, the Principal Agreement and the Lease;
- 1.K The Academy Trust must conduct the Academy within the terms and requirements of the Principal Agreement, the School Agreement and the Lease

2. RUNNING OF THE ACADEMY

Teachers and staff

2.A Subject to clause 18A of the Master Agreement, 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 Not used.

Pupils

2.B The planned capacity of the Academy is 210 in the age range 3-11. The Academy is an all ability inclusive school.

SEN unit

2.C Not used.

2.D Not used.

Charging

2.E Not used.

Admissions

2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with,

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

- 2.G Not used.
- 2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.
- 2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the “pupil premium admission criterion”), but not above looked-after children and previously looked-after children.
- 2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.
- 2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
- a) any personal details about their financial status; or
 - b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.

2.L The Secretary of State may:

- a) direct the Academy Trust to admit a named pupil to the Academy:
 - i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or
 - ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or
- b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M Not used.

2.N Not used.

2.O Not used.

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

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

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the

Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator (“**OSA**”) will consider objections to the Academy’s admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.K, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy’s admission arrangements, that objections should be submitted to the OSA. The OSA’s determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.T Not used.

Curriculum

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

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

2.W Not used.

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

a) provision must be made for religious education to be given to all pupils

at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

- b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y Not used.

2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

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

3. **GRANT FUNDING**

Calculation of GAG

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

3.B The Secretary of State will, in advance of each Academy Financial Year for

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

- 3.C In the Academy Financial Year which immediately follows the Academy Financial Year in which all planned year groups will be present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present), the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.B, but in that and all following Academy Financial Years will be determined in accordance with clause 3.F.
- 3.D For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 3.A and 3.B, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Census for the relevant month (determined at the Secretary of State's discretion) for the Academy Financial Year in question as a means of determining pupil numbers. The additional or clawed-back grant will be only the amount relevant to the number of pupils above or below that estimate.
- 3.E Not used
- 3.F For Academy Financial Years which immediately follow the Academy Financial Year in which all planned year groups will be present at the Academy, the basis of the pupil count for determining GAG will be:
- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
 - b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools

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

3.H Not used.

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

Other relevant funding

3.J Not Used.

3.K Not used.

Carrying forward of funds

- 3.L Any additional grant made in accordance with clause 3.I, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice under this Agreement, or otherwise terminates the Master Agreement, may be carried forward without limitation or deduction until the circumstances set out in clause 3.I cease to apply or the Academy closes.
- 3.L.1 The Academy Trust must use the GAG funding it receives prudently to cover the normal reasonable running costs of the Academy including payments which fall due pursuant to the School Agreement or the Principal Agreement and to make payments under the School Agreement which will in turn form a contribution to the LA's obligations to pay the unitary charge under the Project Agreement.
- 3.M If the Secretary of State makes a payment under the Principal Agreement the Secretary of State may, subject to clause 3.N, set off or abate an equivalent amount from any GAG payable to the Academy Trust pursuant to this Agreement in the following financial year.
- 3.N Before making any set off or abatement pursuant to clause 3.M above, the Secretary of State shall:
- 3.N.1 notify the Academy Trust of the payment under the Principal Agreement;
 - 3.N.2 take into account (acting reasonably) any representations made by the Academy Trust providing reasons why the relevant liabilities were not settled;
 - 3.N.3 take into account (acting reasonably) any representations made by the Academy Trust as to the nature of the liabilities under consideration.

4. LAND

"Land" means the land at Snape Hill Road, Darfield, Barnsley S73 9LT, being the land demised by the Lease registered under title numbers SYK518622 and SYK610710

"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

4.A 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

4.B Save to the extent that any of the Academy Trust’s obligations are the responsibility of the PFI Contractor (whereupon the Academy Trust must use

reasonable endeavours to procure the PFI Contractor's compliance with its obligations under the Project Agreement), 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.

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

- 4.E 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

- 4.F 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

4.G If the Academy Trust receives a Property Notice, it must:

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

Breach of Lease

- 4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.
- 4.I After notifying the Secretary of State under clause 4.H, 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

- 4.J 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.
- 4.K 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 4.J, 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.

4.L For the purposes of clause 4.J:

- 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.B.

5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or

- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or
- e) the Academy has not improved sufficiently following the service of a Coasting Notice.
- f) the Secretary of State is obliged to make a payment under the Principal Agreement;
- g) the Secretary of State considers that in the immediately preceding 12 month period, the aggregate of payments made by the Academy Trust to the LA under the Principal Agreement has reached a level which the Secretary of State considers to be excessive and which may (assessed objectively) cause the Academy Trust material financial difficulties;
- h) the Secretary of State considers (acting reasonably) that there has been a Persistent Breach of the School Agreement or the Principal Agreement likely to materially and adversely impact on the provision of educational services at the Academy, and for the purposes of this clause 5.B(g)., "Persistent Breach" means: (i) a particular breach which has recurred three (3) or more times in any rolling six (6) month period; or (ii) the occurrence of five (5) or more different breaches in any rolling six (6) month period;
- i) the Academy Trust has committed a material breach of the School Agreement or the Principal Agreement;
- j) the Secretary of State has received a notice from the LA informing it of instances of breaches or non-compliance by the Academy Trust with the School Agreement or Principal Agreement that may have the consequence of causing the LA to be in breach or default of the Project Agreement;

- k) the Academy Trust has failed to take the action referred to in clause 5.C by the date specified in clause 5.C; or
- l) the circumstances envisaged by clauses 5.II and 5.JJ of this Agreement in respect of EAG funding are applicable

Each of a) to l) (inclusive) above is a default event for the purposes of this Agreement

5.B.1 The Secretary of State will serve a Coasting Notice where the Academy is found to be coasting. A Coasting Notice will specify:

- a) that the Academy Trust must submit a plan to the Secretary of State setting out the actions to be taken to improve the school sufficiently; and
- b) the date by which the plan must be submitted.

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

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

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

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

Termination by the Secretary of State after inspection

- 5.F If the Chief Inspector gives notice to the Academy Trust that:
- a) special measures are required to be taken in relation to the Academy;
or
 - b) the Academy requires significant improvement

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

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

5.G.1 Not used.

- 5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F and:
- a) has not received any representations from the Academy Trust by the date specified in the notice; or
 - b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;
- he may serve a Termination Notice.

5.I Not used.

Termination by the Secretary of State

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

5.K Not used.

5.L Not used.

5.M Not used.

5.N Not used.

5.O Not used.

Funding and admission during notice period

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

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

Notice of intention to terminate by Academy Trust

5.R The provisions of this clause 5R and of clauses 5.S to 5.Y (inclusive) shall apply when the Project Agreement has expired or been terminated. The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the **"Funding Allocation"**).

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

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

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

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

5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the "**Expert**") for resolution. The

Expert's determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**").

- 5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert's fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.
- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August of the Critical Year. Any such notice will be given within 21 days after (a) the Expert's determination will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Effect of termination

5.Z The provisions of this clause 5.Z and of clauses 5.AA to 5.LL (inclusive) shall apply when the Project Agreement is subsisting.

5AA The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final allocation indicating the level of GAG

and EAG to be provided in the next following Academy Financial Year (the "Indicative Funding").

5.BB For the purpose of clauses 5.BB to 5.LL:

"Critical Years" means the current financial year and, if an annual letter of funding or its equivalent has been received for the following financial year, that financial year;

"Current Funding" means the funding specified in the annual letters of funding (or their equivalent) for the Critical Years and all other resources available and likely to be available to the Academy Trust, including funds detailed in the Master Agreement;

A "PFI EAG Refusal" occurs where:

- (a) the Academy Trust has made a request for EAG funding in connection with its obligations or discharging its liabilities under the School Agreement or the Principal Agreement; and
- (b) the Secretary of State has not agreed, in accordance with clauses 3.16 and 3.17 of the Master Agreement, to provide such EAG funding to the Academy Trust.

5.CC Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Academy Trust may provide written notice that it considers that, after taking into account its Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency ("Academy Trust Insolvency Notice").

5.DD Any Academy Trust Insolvency Notice must specify:

5.DD.1 the grounds upon which the Academy Trust's opinion is based, including:

- (i) evidence of those grounds;

- (ii) any professional accounting advice, upon which the Academy Trust's opinion is based;
- (iii) a detailed statement of steps which the Academy Trust proposes to take to ensure that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs are less than its Current Funding and the period of time within which such steps will be taken;
- (iv) the shortfall in the Critical Years between the Current Funding expected to be available to the Academy Trust to cover the running costs and the projected expenditure of the Academy Trust; and
- (v) a detailed budget of income and expenditure for the Academy during the Critical Years.

5.EE Within 15 days of the provision of the Academy Trust Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency and such Insolvency could not be avoided through prudent financial management (including, by using GAG funding prudently). Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and agree to use their reasonable endeavours to agree a practical solution to the problem.

5.FF If no agreement is reached in accordance with clause 5.EE within 15 days of the Academy Trust Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "Expert") for determination:

5.FF.1 whether, on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency;

5.FF.2 whether the Academy Trust is using the funds provided under this Agreement and the Master Agreement prudently; and

5.FF.3 whether the Academy Trust is using the funds provided under this Agreement and the Master Agreement in accordance with the requirements of this Agreement and the Master Agreement.

The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination:

- (a) the amount of the shortfall (if any) in funding between the running costs and the Current Funding during the Critical Years (the "Shortfall"); and
- (b) (if appropriate) recommendations as to future spending and the running costs.

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

5.GG The parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in determining the matters referred to him. The Expert will be required to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman of the Specialist Schools and Academies Trust.

5.HH The Expert's and the educational specialist's fees shall be borne equally between the parties.

5.II For the purpose of clauses 5.JJ and 5.LL, "Insolvency Decision" means either:

- 5.II.1 in accordance with clause 5.EE, the Secretary of State agrees with the Academy Trust that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency which could not be avoided through prudent financial management (including, using GAG funding prudently); or
- 5.II.2 an Expert determines in accordance with clause 5.FF that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency or that the Academy Trust is not using the funds provided under this Agreement and the Master Agreement prudently and in accordance with the requirements of this Agreement and the Master Agreement.
- 5.JJ Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:
- 5.JJ.1 withdraw the PFI EAG Refusal and promptly pay to the Academy Trust the amount of requested EAG funding or such other sum as shall be appropriate; or
- 5.JJ.2 terminate this Agreement on not less than 20 Business Days notice to the Academy Trust.
- 5.KK In the event that the Secretary of State provides additional EAG funding in accordance with clause 5.JJ, the Secretary of State may within 12 months of paying the additional EAG funding, terminate this Agreement at any time.
- 5.LL In the event that there is no Insolvency Decision, this Agreement shall continue and the Secretary of State shall not be obliged to pay to the Academy Trust the requested EAG funding
- 5.MM If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 5.NN Subject to clauses 5.OO and 5.PP, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause

5.A, he may at his discretion indemnify or compensate the Academy Trust.

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

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

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

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

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

5.RR The Secretary of State may:

- a) Waive all or part of the repayment due under sub-clause 5.QQ(b) if the Academy Trust obtains his permission to invest the sale proceeds for

its charitable purposes; or

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

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

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

General

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

6.H Not used.

This Agreement was executed as a Deed on

2016

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

.....

Director

.....

Witness

Name:

Address:

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

.....

Duly Authorised

ANNEXES

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

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

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

7.A Except as set out in clause 8 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State’s determination will be final, subject to any right of appeal which a parent of the child may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

7.B Not used

7.C Not used

7.D Not used.

8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

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

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

where admitting the child would be incompatible with the provision of efficient education for other children, and no reasonable steps could secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children or the efficient use of resources, the Academy Trust must have regard to the relevant Guidance issued to maintained schools.

- 8.C If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.
- 8.D The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA.
- 8.E If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.
- 8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability), either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.
- 8.G Where it has been finally determined that the Academy be named in a child's statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.

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



Department
for Education

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